



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Approving Contracts for Three Public Benefits Programs, Authorizing Execution by the City Manager, and Allocating Funds (\$104,800) (EUD)

**MEETING DATE:** September 1, 2010

**PREPARED BY:** Electric Utility Director

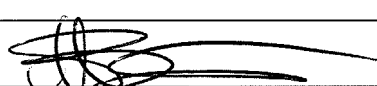
**RECOMMENDED ACTION:** Adopt a resolution approving contracts for three public benefits programs, authorizing execution by the City Manager, and allocating funds (\$104,800).

**BACKGROUND INFORMATION:** **Lodi Keep Your Cool Program:** This will be the third year for the direct-install energy conservation program. Lodi Electric Utility's public benefit funds provide incentives for G1 and G2 commercial customers, such as restaurants, mini-markets and small grocery stores, to install energy-efficiency measures in refrigeration. For the 2010-2011 program year, the measures include: high-efficiency motors, fan motor controllers, anti-sweat heater controls, and infiltration barriers, such as gaskets, strip curtains and door closers. Thirty to 50 percent of a restaurant or grocery store's annual energy costs are consumed by refrigeration. Depending on customer participation, the program will save an estimated 150,000 to 300,000 kilowatt-hours annually, thus reducing operating costs for these customers. Last year, Lodi Keep Your Cool provided 22 commercial customers more than 400,000 kilowatt-hours of energy savings. The program (including materials and installation) will again be conducted by the Bay Area Gasket Guy under a professional services agreement for \$50,000.

**Lodi Vending Miser Installation Program:** This is a new energy conservation program for the utility's commercial/industrial customers. SBW Consulting of Bellevue, Wash., will administer this direct-install program. Under the \$25,000 professional services agreement, SBW will locate and retrofit over 110 inefficient cold beverage vending machines with an energy management system that automatically reduces energy load (shutting off lighting and cycling the unit's motor off) when the machine is not in frequent use. Annual energy savings are estimated to top 175,000 kilowatt-hours for 110 vending machines.

**Lodi On-Line Energy Audit Program:** Lodi Electric Utility offers on-line energy audits for residential customers. The on-line service, known as the HomeEnergySuite, is provided by the firm APOGEE Interactive. The on-line tool provides customers with the ability to determine how their monthly energy dollars are expended. The tool also provides access to lighting and appliance calculators, an educational "Kids Korner" and an energy conservation reference library. On average, 50 to 75 customers per month use this free service. APOGEE Interactive maintains an on-line database, provides monthly updates on how many customers use the service, and continually updates the energy conservation reference library with new and emerging energy technologies. Newly added for this year is a small-business on-line

APPROVED: \_\_\_\_\_

  
Konradt Bartlam, Interim City Manager

energy audit program, similar to the residential program. The professional services agreement with APOGEE Interactive for the 2010/2011 fiscal year is \$29,800.

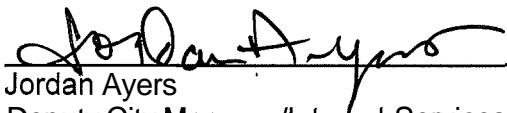
EUD staff recommends approval for the three programs, which use budgeted public benefit funds:

- 1) Bay Area Gasket Guy to administer the Lodi Keep Your Cool Program and install designated energy efficiency improvements (\$50,000).
- 2) SBW Consulting, Incorporated, to administer the Lodi Vending Miser Installation Program and retrofit cold beverage vending machines (\$25,000).
- 3) APOGEE Interactive to provide on-line services for the Lodi Energy Audit Program (\$29,800).

Two of these entities have provided excellent service to the City of Lodi over the years. SBW Consulting has experience/professional service contracts with other municipal utilities, and pioneered the "Vending-Miser" technology.

**FISCAL IMPACT:** The three programs/contracts will account for \$104,800 in Public Benefit Program funds allocated in the Fiscal Year 2010/2011 budget. Based upon the projected 325,000-475,000 kilowatt hour energy savings per year (for two of the aforementioned programs), participating customers' annual combined energy savings will be \$50,000 to \$70,000.

**FUNDING:** Included in Fiscal Year 2010/11 Budget  
Account 164605 – Public Benefits (Demand-side Management) - \$104,800

  
Jordan Ayers  
Deputy City Manager/Internal Services Director

  
Elizabeth A. Kirkley  
Electric Utility Director

Prepared By: Rob Lechner, Manager, Customer Service & Programs

EAK/KW/RSL/lst

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### **ARTICLE I PARTIES AND PURPOSE**

#### **Section 1.1 Parties**

THIS AGREEMENT is entered into on July 26, 2010, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and Castrovilla, Inc., dba Bay Area Refrigeration (hereinafter "CONSULTANT").

#### **Section 1.2 Purpose**

CITY selected the CONSULTANT to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONSULTANT for the Lodi Keep Your Cool program (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONSULTANT acknowledges that it is qualified to provide such services to CITY.

### **ARTICLE 2 SCOPE OF SERVICES**

#### **Section 2.1 Scope of Services**

CONSULTANT, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

#### **Section 2.2 Time For Commencement and Cor of Work**

CONSULTANT shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONSULTANT shall remain

in contact with reviewing agencies and make all efforts to review and return all comments.

### **Section 2.3 Meetings**

CONSULTANT shall attend meetings as may be set forth in the Scope of Services.

### **Section 2.4 Staffing**

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONSULTANT: unless agreed to otherwise by CITY in writing. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify: defend and hold harmless CITY against any costs associated with such licenses: permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

### **Section 2.5 Subcontracts**

Unless prior written approval of CITY is obtained: CONSULTANT shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

## **ARTICLE 3 COMPENSATION**

### **Section 3.1 Compensation**

CONSULTANT's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

**Section 3.2 Method of Payment**

CONSULTANT shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

**Section 3.3 Costs**

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

**Section 3.4 Auditing**

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

**ARTICLE 4**  
**MISCELLANEOUS PROVISIONS**

**Section 4.1 Nondiscrimination**

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any sub

consultant on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

#### **Section 4.2 ADA Compliance**

In performing services under this Agreement, CONSULTANT shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

#### **Section 4.3 Indemnification and Responsibility for Damage**

CONSULTANT to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONSULTANT, any subcontractor employed directly by CONSULTANT, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

#### **Section 4.4 No Personal Liability**

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

#### **Section 4.5 Responsibility of CITY**

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

#### **I 4.6 Insurance Requirements for CONSULTANT**

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

#### **Section 4.7 Successors and Assigns**

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY

#### **Section 4.8 Notices**

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY:                      City of Lodi  
                                     221 West Pine Street  
                                     P.O. Box 3006  
                                     Lodi, CA 95241-1910

To CONSULTANT:      Bay Area Refrigeration  
                                     253 Polaris Ave.  
                                     Mountain View, CA 94043

#### **Section 4.09 Cooperation of CITY**

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

#### **Section 4.10 CONSULTANT is Not an Employee of CITY**

CONSULTANT agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONSULTANT meet specific standards without regard to the manner and means of accomplishment thereof.

#### **Section 4.11 Termination**

CITY may terminate this Agreement, with or without cause, by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.

#### **Section 4.12 Confidentiality**

CONSULTANT agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONSULTANT and clearly marked by CONSULTANT as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONSULTANT. CONSULTANT acknowledges that CITY is subject to the California Public Records Act.

**Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

**Section 4.14 City in License Requirement**

CONSULTANT acknowledges that Lodi Municipal Code Section 3.01.020 requires CONSULTANT to have a city business license and CONSULTANT agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

**Section 4.15 Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

**Section 4.16 Integration and Modification**

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.



**Section 4.17 Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**Section 4.18 Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during CONSULTANT's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

**Section 4.19 Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.

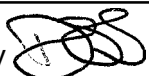
CITY ~~OF~~ LODI, a municipal corporation

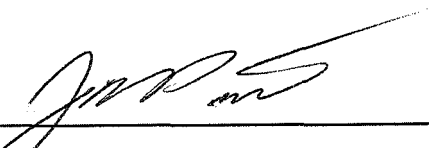
ATTEST:

By \_\_\_\_\_  
RANDI JOHL  
CITY CLERK

By \_\_\_\_\_  
KONRADT BARTLAM  
INTERIM CITY MANAGER

APPROVED **AS** TO FORM:  
D. STEPHEN SCHWABAUER, City Attorney

By \_\_\_\_\_  
Janice D. Magdich  
Deputy City Attorney 

By:   
Its: John Pink  
President

Attachments:

Exhibit A – Scope of Services

Exhibit **B** – Fee Proposal

Exhibit C – Insurance Requirements

## ***Lodi Keep Your Cool Program***

### ***Phase II Program Proposal***

***March 25, 2010***

#### **Program Abstract**

***Lodi Keep Your Cool*** focuses on improving existing commercial refrigeration systems, which are one of California's most energy intensive end uses<sup>1</sup>. Business owners and facility managers are encouraged to retrofit their refrigeration equipment by utilizing a suite of measures that optimize the efficiency of their existing refrigeration system. Each measure is highly cost-effective on its own merits, but provides the greatest return when installed alongside the others.

#### **Phase I Review and Results**

Phase I of the program highlighted gaskets, strip curtains and automatic door closers. The intent of focusing on these "simple" measures was to lower the bar for customer participation, offering "no-brainer" projects that maximized participation. Phase I was successful in signing up 38 businesses to the program. Measure totals were:

Gaskets: 5,863 linear feet  
Strip Curtains: 1,633 square feet  
Door Closers: 23 door closers

This yielded a calculated savings of 1,369,249 kWh.

While successful, the program achieved a penetration of only 12% of potential businesses. This was approached the targeted rate of 15% but demonstrates that ample opportunity among this customer base still exists. For comparison, the Santa Clara Keep Your Cool program, which started one year earlier than Lodi Keep Your Cool, achieved a participation rate of 30%.

#### **Phase II Strategy**

In Phase II, the ***Keep Your Cool*** program continues its focus on energy saving opportunities within food service and grocery industries where commercial refrigeration equipment represents a significant portion of energy demand. Between 30% and 50% of the electricity used in food service, grocery stores, liquor stores, convenience stores and bars is consumed by refrigeration. While most communities reserve additional opportunity for the Phase I measures, Phase II emphasizes new measures that can help past participants reach the next level of energy efficient operations. The result will be greater and longer lasting savings per project at a cost/kWh equal to or lower than Phase I.

The key developments for Phase II are:

- More comprehensive measure list
- Pre-implementation training for participating utilities (if desired)
- Comprehensive incentives and possible customer financing options

---

<sup>1</sup> CEUS Survey, pg. 7

Collectively these improvements will yield an even more effective program that matches the needs of each utility and their customers, while continuing to be simple to implement.

### Targeted Measures

The proposed Phase II measure list represents the broadest set of highly reliable and easy to implement efficiency opportunities. Most qualifying customer will be able to benefit from several of these measures and receive a comprehensive refrigeration retrofit.

*Lodi Keep Your Cool* best practice measures will include:

- Programmable Electronically Commutated Motors
- ECM Evaporator Fan Motor Controllers
- Anti-Sweat Heater (ASH) Controls
- Infiltration Barriers (gaskets, strip curtains and door closers)

*Table 1 - KYC Measures* illustrates the expanded measure list for Phase II, along with key measure statistics.

- Total Resource Cost (TRC) test values include direct measure installation costs and overhead costs
- Levelized cost is based on the Effective Useful Life of the measure, Discount Rate, Net to Gross ratio, energy savings and measure installed cost per unit.

Measure	Unit Type	Annual kWh/Unit	kW/unit	EUL	NTG	D.Rate	Direct Cost/Unit	Direct Install Cost/kWh	Levelized Cost/kWh	TRC/Unit
Walk-in Closer, freezer	Closer	2415	0.343	8	0.80	4.5%	\$150.00	\$0.06	\$0.011	10.30
Reach-in Closer, freezer	Closer	1210	0.235	8	0.80	4.5%	\$125.00	\$0.10	\$0.019	6.20
Walk-in Closer, cooler	Closer	979	0.145	8	0.80	4.5%	\$150.00	\$0.15	\$0.028	4.18
Reach-in Closer, cooler	Closer	405	0.079	8	0.80	4.5%	\$125.00	\$0.31	\$0.056	2.07
EC Motor Controller (8 fans)	Controller	4414	0.000	8	0.96	4.5%	\$625.00	\$0.14	\$0.021	5.42
EC Motor Controller (4 fans)	Controller	2207	0.000	8	0.96	4.5%	\$625.00	\$0.28	\$0.043	2.71
EC Motor Controller (3 fans)	Controller	1655	0.000	8	0.96	4.5%	\$625.00	\$0.38	\$0.057	2.03
EC Motor Controller (2 fans)	Controller	1104	0.000	8	0.96	4.5%	\$625.00	\$0.57	\$0.086	1.36
ASH Controller, frame only	Lin.Ft.	395	0.008	12	0.96	4.5%	\$58.00	\$0.15	\$0.016	7.84
ASH Controller w/glass heat	Lin.Ft.	395	0.008	12	0.96	4.5%	\$58.00	\$0.15	\$0.016	7.84
Door Gasket	Lin.Ft.	44	0.010	4	0.80	4.5%	\$8.00	\$0.18	\$0.061	1.76
Programmable EC Motor (3/4 HP, 5.6A)	Motor	4507	0.342	8	0.80	4.5%	\$479.00	\$0.11	\$0.019	6.02
Programmable EC Motor (1/2 HP, 4.0A)	Motor	3733	0.283	8	0.80	4.5%	\$459.00	\$0.12	\$0.022	5.20
Programmable EC Motor (1/3 HP, 2.6A)	Motor	2315	0.176	8	0.80	4.5%	\$369.00	\$0.16	\$0.029	4.02
Programmable EC Motor (1/15 HP, 1.8A)	Motor	1036	0.082	8	0.80	4.5%	\$219.00	\$0.21	\$0.038	3.03
Programmable EC Motor (1/15 HP, 3.2A)	Motor	1488	0.113	8	0.80	4.5%	\$389.00	\$0.26	\$0.047	2.45
Programmable EC Motor (1/47 HP, 1.1A)	Motor	580	0.041	8	0.80	4.5%	\$157.50	\$0.27	\$0.049	2.36
Strip Curtain, warehouse	Sq.Ft	1472	2.850	4	0.80	4.5%	\$20.00	\$0.01	\$0.005	23.55
Strip Curtain, walk-in	Sq.Ft	167	0.282	4	0.80	4.5%	\$9.87	\$0.06	\$0.020	5.41

*Table 1 - KYC Measures*

## Program Costs

The program cost structure is based on the actual cost of the installed measures. Based on the market assessment, Lodi's budget and the costs of the different measures the following is the targeted cost breakdown by measure for Lodi Keep Your Cool:

Measure (units)	Measure Cost/Unit	Total kWh Potential	Total kW Potential	Target Penetration Rate	100% DI Incentive Cost/kwh	Projected kWh Savings	Total Incentive Budget
Gaskets (Inr. Ft.)	\$8.00	637,758	148	5.0%	\$0.182	31,939	\$5,812.89
Strip Curtains (sq. ft.)	\$9.87	534,116	902	10.0%	\$0.059	53,412	\$3,156.75
Door Closers (ea.)	\$150.00	61,620	10	5.0%	\$0.187	3,081	\$576.75
EC Motors (ea.)	\$223.23	1,139,363	105	9.0%	\$0.203	102,185	\$20,743.52
ECM Fan Controls (ea.)	\$625.00	427,660	0	15.0%	\$0.213	64,167	\$13,667.58
ASH Controls (ea.)	\$58.00	396,312	8	10.0%	\$0.147	39,703	\$5,836.35
Total Incentive Costs							\$49,793.83

## Cost Effectiveness

Total Resource Cost Test (TRC) measures the cost and benefits of an efficiency measure as a resource option based on the total cost of the measure to the utility's service territory, including both participant and utility costs. Per *Table I - KYC Measures*, Phase II measures range from a TRC of 1.76 to a TRC of 23.55. Measures that achieve a TRC of 1.0 or greater are considered to be cost-effective; the KYC Program TRC is conservatively estimated to fall within the range of **3.5 – 4.0** based on the full suite of measures.

Levelized Cost calculations are often used to represent, on a consistent basis, the cost of energy saved by an efficiency program that includes various measures with different useful lives. Unlike the TRC test, the calculation only includes utility costs; therefore, the program levelized cost will vary depending on the measure portfolio and utility funding levels. The KYC Program levelized cost is estimated to be **\$0.03/kWh** as a direct install program (100% utility funded with no customer co-pays) that includes the proposed suite of measures. The chart below summarizes projected kWh/kW savings and associated costs.

Proj. kWh Savings	294,487
Proj. kW Reduction	89
Proj. cost/kwh	\$0.1691
Proj. Levelized Cost/kWh	\$0.030

## Participant Recruitment

The *Keep Your Cool* program will use the same successful recruitment strategy from previous phases of the program. Humitech works with utility partners to engage in a comprehensive marketing and recruitment of potential customers, including the use of utility-generated customer lists, targeted

mailings, cold calls, website material, and on-site energy audits. Based on the available budget, Castrovilla anticipates capturing **8%** of the potential energy savings for the proposed measures.

### Conclusion

Castrovilla, Inc dba Bay Area Refrigeration (formerly Humitech, LLC dba Bay Area Gasket Guy), is proud to have performed thousands of energy efficiency retrofit projects throughout the Bay Area, Central and Northern California saving millions of kilowatt hours of energy. Due to the fact that existing IOU and IOU-administered programs do not operate in POU communities, KYC has done significantly more targeted energy efficiency projects in those areas than other California communities. Through this program Lodi Electric Utility business customers can expect the same benefits their colleagues and competitors in other cities have enjoyed.

## Appendix 1

### *Keep Your Cool* Comprehensive Program Description

#### **I. Measure Descriptions, Expected Energy Savings and Peak Demand Reduction**

##### **Programmable Electronically Commutated Motors + Evaporator Fan Controller**

Walk-in cooler evaporator fan motors run non-stop 24 hours a day, 365 days a year. Walk-in freezer motors may stop briefly for defrost cycles, but otherwise also operate continuously. EC motors up to 1/15 horsepower use less than half of the electricity than existing shaded pole motors and run much cooler, introducing far less heat to the refrigeration system. EC Motors from 1/5 to 3/4 horsepower consume roughly 1/3 less power and also greatly reduce heat load.

Walk-in ECM effectiveness is nearly doubled (97% improvement) by the inclusion of an evaporator fan controller. Evaporator fan controllers cycle fan motors run-time in parallel with the compressor. A compressor for a walk-in cooler/freezer runs only between 40% and 60% of the time, but the fans run at full speed 100% of the time. This is not necessary, so the fan controller senses whether the compressor is sending refrigerant to the evaporator. When the compressor is not running the fan RPMs are reduced to as low as 1/3 of the normal level, dropping energy consumption by 88% (fan law: 1/3 reduction in airflow = 1/9 reduction in power). Fan controllers can be installed on standard motors (shaded pole or permanent split capacitor) but when installed in conjunction with programmable EC Motors the savings are nearly doubled. In addition to the fan savings, the heat load is reduced significantly, lowering the compressor duty cycle by as much as 25%.

Non-energy benefits include higher quality product, as reduced fan speed reduces drying of meat and produces which are commonly stored uncovered. It also reduces noise levels which contribute to worker efficiency and a more pleasant workspace.

The savings for EC Motors<sup>2</sup> and Controllers<sup>3</sup> are calculated using a spreadsheet that has been accepted by PG&E and vetted by numerous third-party programs. Savings are calculated on a per site basis taking the existing motor specifications and putting them into a spreadsheet which factors in the new motor efficiency as well as compressor and condenser savings from reduced heat load. The following are examples of two typical projects:

- A restaurant cooler with 3 shaded pole fan motors and one evaporator: Each motor runs at 115 volts and 1.8 amps. Reduction in fan load and heat load including a 25% reduction in compressor duty cycle will save 5,932 kWh/year. With a EUL of 8 years, the levelized cost is 4 cents per kWh (\$1,359 install cost).
- A convenience store cooler with 8 shaded pole fan motors and 2 evaporators: Each motor runs at 208 volts and 1.0 amps. Reduction in fan load and heat load including a 25% reduction in compressor duty cycle will save 15,896 kWh/year. Based on the same savings assumptions, the levelized cost is 2.8 cents per kWh (\$2,532 install cost).

---

<sup>2</sup> ECM Energy Monitoring 2006 Report by Food Service Technology Center.pdf

<sup>3</sup> ECMotor Analysis 11-03-09. ~ 1 Calculations and Factors Explanation- ECM.pdf; New ECMotor Analysis Sheet Comments.pdf

EC Motors are expected to save a weighted average of 1,097kWh/motor and reduce peak demand by 0.0845/motor. The expected savings and peak demand reduction per site will vary based on the type of establishment, ranging from 2,195 kWh and 0.169 kW to 26,334 kWh and 2.028 kW.

The inclusion of an Evaporator Fan Controller is expected to save a weighted average of 2,928 kWh/controller. The expected energy savings per site will vary based on the type of establishment, ranging from 1,103kWh to 13,242kWh.

### **Anti-Sweat Heater (ASH) Controls**

Uncontrolled frame and door heaters (designed to quickly dissipate condensation that accumulates when a refrigerated door is opened) operate at full power 24 hours per day. However, ambient temperature and relative humidity often yield a dew point below the frame and/or glass temperature, negating the need for added heat. Across California's climate zones there is significant opportunity to greatly reduce, and in some cases practically eliminate, this load. Anti-Sweat heater controls monitor refrigerated temperature, ambient temperature and relative humidity to supply the minimum required power to keep refrigerated case glass doors clear of fog and frames free from condensation. Door frame heaters add considerable heat load to the refrigerated case, so compressor savings are a significant portion of the total savings.

Savings for ASH controls are calculated based on Southern California Edison's most recent work paper<sup>4</sup>. Two typical projects are described below:

- Grocery store frozen aisle, 48 doors at 1.8 amp heater circuit per door (heat supplied to frame and glass). With 65% reduction in run time, total kWh savings will be 47,391. The EUL for this measure is 12 years.
- Convenience store cooler, 12 doors at .5 amp heater circuit per door (heat supplied to frame only). With 85% reduction in run time total, kWh savings will be 10,750. Again the EUL is 12.

This best practice measure is expected to save 987 kWh/case.lin.ft and reduces peak demand by 0.0081/case.lin.ft. The expected savings and peak demand reduction per site will vary based on the type of establishment, ranging from 9,873 kWh and 0.2025 kW to 23,696 kWh and 0.486 kW.

### **LED Refrigerated Case Lighting and Occupancy Sensors**

Latest developments in LED lighting technology offer multiple energy benefits. Compared to a typical T8 base case, LEDs offer total system savings of:

- 61% Wattage Reduction  
Unlike fluorescent lighting, which suffers dramatic loss of light output at refrigerated case temperatures, LEDs produce more light with less energy at lower temperatures.
- 24% Reduced Heat Load  
Fewer watts mean less energy converted to heat which means less work for the compressor. Furthermore, LEDs do not emit infrared light, which converts to heat when it strikes a surface. Fluorescents emit nearly 40% of their output as non-visible infrared; therefore they radiate much more heat than LEDs. LED heat is primarily conducted out the door frame rather than distributed into the refrigerated case.

---

<sup>4</sup> WPSCNRRN0009.0 - Anti-Sweat Heat (ASH) Controls .doc



- 12% Occupancy Sensor Dimming  
By dimming LEDs to 20% output when no shoppers or employees are present, total system savings are increased by an additional 12%.

Taken together these three benefits result in 97% system savings from lighting.

Non-energy benefits include:

#### Reduced Maintenance Expenses

With a 50,000 hour useful life LEDs last much longer than T8s. Fewer outages mean fewer lost sales when lamps do fail. When asked, many shoppers indicated a severe reluctance to purchase a product from an unlit refrigerated case<sup>5</sup>. A possible explanation is their experience at home when a refrigerator lighting failure occurs (this usually indicates total loss of refrigeration and spoilage). While this is not usually the case in a commercial setting, the fear carries over.

#### LEDs Do Not Contain Mercury

Mercury is highly toxic and fluorescent lamps must be disposed of properly.

#### LEDs Produce More Even Light and Less Glare

Because LEDs are directional, distribution of light across a display door is more uniform and less light spills into aisles which creates glare that can obscure rather than illuminate product.

Actual energy savings will be calculated on a per site basis by recording the specifications of the base case luminaries and taking the difference from the retrofit models, including occupancy sensor and compressor savings, consistent with the DOE findings.

Based on two recent reports from DOE and SMUD<sup>6</sup>, this best practice measure saves 467 kWh/door and reduces peak demand by 0.0384/door. The expected energy savings and peak demand reduction per site will vary based on the type of establishment, ranging from 4,666 kWh and 0.384 kW to 37,329 kWh and 3.072 kW.

#### **Infiltration Barriers (gaskets, strip curtains and door closers)**

These “basic” infiltration barriers are crucial to system efficiency. Replacing motors and installing controls while leaving gaps around and under doors greatly undermines the benefits of the upgrades.

Door gaskets: Bad gaskets overwork refrigerator and freezer compressors by allowing warm air to leak into the refrigerated space. Poorly working hardware such as latches and hinges can prevent even a perfect gasket from sealing, so this is also checked and repairs are specified if necessary to create a tight seal. Door gaskets can be replaced on both glass and solid reach-in and walk-in insulated doors. These are regular maintenance items that are often postponed or ignored by customers. Replacement gaskets used in the KYC program are manufactured to OEM specifications for material, magnetism, attachment method (e.g. press-in, screw-in, adhesive) and compression.

<sup>5</sup> LED-Freezer-Case-Lighting; (Final).pdf, SMUD, pg. 12

<sup>6</sup> Eugene Freezer Case G-Way Rpt 18873final.doc, LED\_Freezer\_Case\_Lighting\_(Final).pdf

This best practice measure is expected to save 44 kWh/ lin.ft<sup>7</sup> and reduce peak demand by 0.01019/lin.ft. The expected energy savings and peak demand reduction per site will vary based on the type of establishment, ranging from 2,156 kWh and 0.50 kW to 24,112 kWh and 5.58 kW.

The primary non-energy benefit of replacing gaskets is improved sanitation. Tears and cracks in gaskets harbor debris that facilitates mold and bacterial growth.

Strip curtains: Each time a walk-in door is opened warm refrigerated space is exposed to warm, and often moist, air. Often, during stocking activities or due to inattentive staff, doors are left open for long periods of time. Strip curtains reduce the amount of outside air that enters the cooler/freezer. **Strip** curtains can be installed on any size door including large warehouse openings up to 20 feet high. New strip curtains have a EUL of 4 years. Savings are calculated per square foot installed. Calculations may vary by type of door (standard walk-in doors vs. warehouse doors with forklift traffic), type of establishment, climate zone and equipment temperature.

At the request of Silicon Valley Energy Watch, Humitech recently sourced a non-phthalate compound for strip curtains. While this has no energy benefit, it may reduce hazards caused by exposure to phthalate containing compounds. *Keep Your Cool* will utilize non-phthalate plastics in its strip curtains.

This best practice measure is expected to save 167 kWh/sq.ft.<sup>8</sup> and reduce peak demand by 0.282/sq.ft. The expected energy savings and peak demand reduction per site will vary based on the type of establishment, ranging from 2,156 kWh and 0.50 kW to 24,112 kWh and 5.58 kW.

Auto-closers: Customers and staff regularly leave doors open or ajar on walk-in and reach-in coolers/freezers, forcing the compressor to compensate. Auto-closers for walk-in doors work best when used together with cam-lift, spring-assist hinges. Walk-in door closers, or “snuggers,” close the door when it is within one inch of closing. Closers for reach-in display doors close the door without assistance after the door has been open wide enough to add or remove product from the cooler/freezer.

- Reach-in coolers: Using an average of 405 kWh/linear per reach-in cooler closer, an installed cost of \$125/closer and 8 year EUL, the levelized cost of one unit is \$0.056/kWh with an incentive of \$0.309.
- Reach-in freezers: Using an average of 1210 kWh/linear per reach-in freezer closer, an installed cost of \$125/closer and 8 year EUL, the levelized cost of one unit is \$0.019/kWh with an incentive of \$0.103.
- Walk-in coolers: Using an average of 979 kWh/linear per walk-in cooler closer, an installed cost of \$150/closer and 8 year EUL, the levelized cost of one unit is \$0.028/kWh with an incentive of \$0.153.
- Walk-in freezer: Using an average of 2415 kWh/linear per walk-in freezer closer, an installed cost of \$150/closer and 8 year EUL, the levelized cost of one unit is \$0.011/kWh with an incentive of \$0.062.

---

<sup>7</sup> refrigerated gaskets–POU workpaper\_v3.xlsx

<sup>8</sup> Strip Curtains PGECOREF103 R1 execsum.xls

This best practice measure is expected to save a weighted average of 801 kWh/closer<sup>9</sup> and reduce peak demand by 0.1341/closer. The expected energy savings and peak demand reduction per site will vary based on the type of establishment, ranging from 801 kWh and 0.1341 kW to 2,404 kWh and 0.40 kW.

### **Low Wattage T8 Fluorescent Lamps**

Low wattage T8s fall outside the scope of walk-in refrigeration best practices as they are not suited to cold environments. However standard F32 3500k T8s with instant start ballasts are prevalent in commercial kitchens. This is an ideal situation for a 1:1 replacement to a 25 watt 5000k T8. A single kitchen can have as many as 100 of these lamps. The replacement yields not only energy savings, but improved color rendering and greater perceived light output (measured as photopic/scotopic ratio) resulting in a safer work environment with less eye strain.

Lighting retrofits on this small scale are not typically attractive to lighting companies and often overlooked, but provided as a “foot in the door” offer to prospective program participants, they can be used as a very simple, extremely cost effective tool encouraging further program participation. Removed lamps will be processed via EPA regulations ensuring mercury does not go to a landfill.

Based on savings calculations from PG&E’s tech brief<sup>10</sup>, this best practice measure saves 46 kWh/lamp and reduces peak demand by 0.007/lamp. The expected energy savings and peak demand reduction per site will vary based on the type of establishment, ranging from 184 kWh and 0.03 kW to 4,599 kWh and 29 kW.

### **Vending and Merchandising Cooler Controllers<sup>11</sup>**

The Reach-In Cooler Vending Controller (Cooler Miser) and Vending Machine Controller (Vendor Miser) are energy control devices for refrigerated merchandise coolers with glass fronts and coin-operated vending machines. These coolers operate 24/7/365 (8,760 hrs/yr) irrespective of the sites’ operating hours, and contain fluorescent display lamps that operate continuously and refrigeration equipment that cycles continuously. The Controller curtails power to the cooler when customers are not present, reducing energy needed to power display lighting and refrigeration. Additional interactive savings are realized by eliminating the heat sources (evaporator fan and display lighting) within the cooler’s cold box cabinet, thereby reducing the refrigeration load.

In practice, merchandise coolers and vending machines only need to be operated 1) when a customer is present or 2) when the compressor must run to maintain the product at the desired temperature. The Controller must maintain the product at the correct temperature and safely operate the compressor. This is accomplished using three technologies:

- Passive infrared sensor to detect occupancy and turn off the display lights and compressor when no one is around
- Compressor detection to monitor a cooler’s refrigeration system operation and prevent short cycling of its compressor
- Room temperature sampling while in energy savings mode (re-powers cooler at –2 hour intervals or as needed to maintain product temperature)

<sup>9</sup> PGECOREF113 R I Auto Closers for Reach in Cooler or Freezer Doors.doc; RefrigerationWP\_2006\_113005.xls

<sup>10</sup> fs\_lwt8techbriefrd.pdf

<sup>11</sup> EA RL 09-11 WP 090807 - R143 - VMReach-in\_GT\_v2 OPP 081709.doc, pg. 5

Logic in the Controller shuts off the cooler if no one is present for 15 minutes. Compressor protection is another requirement; compressor motor current must be sensed by the Controller indicating compressor operating status to prevent power curtailment until the compressor has completed its cooling cycle. The Controller and its sensor can be mounted on an adjacent wall or directly onto the merchandise cooler itself.

## II. Targeted Industries and Market Potential

There are eleven (11) types of non-residential buildings that typically have a significant commercial refrigeration load. The following chart shows the distribution of building types in the proposed utility service areas:

Primary SIC	% of Total
Restaurants	53.39%
Bars	4.39%
Liquor retail	4.37%
Florsists	3.02%
Hotels	5.52%
ilealthcare	4.29%
Education	12%
Small Grocery	8.12%
Medium Grocerv	3.21%
Large Grocery	0.77%
Supermarket	0.87%
<b>Total</b>	<b>100%</b>

Each of the building types conforms to a standard measure profile with regards to the number and type of refrigeration components. For example, in a typical small grocery (< 2,500 square feet building size) KYC would to expect find 10-12 glass doors, a walk-in door, 2-3 evaporators with 8-9 fan motors, a reach-in cooler, and about 30 T8 lamps running 18 hours per day. Based on this equipment, a small grocery store would contain the following measure profile:

Site Type	Measure	Unit Type	Units/Site
Small Grocery	Gasket	Lin.Ft.	145
Small Grocery	Walk-in Door Strip Curtain	Squ.Ft.	21
Small Grocery	Auto Door Closer	Closer	2
Small Grocery	EC Motor Controller	Controller	1
Small Grocery	Anti-Sweat Heater Controls	Case.Lin.Ft.	25
Small Grocery	LED Case Lighting	Door	10
Small Grocery	EC Motor	Motor	8
Small Grocery	Low Wattage T8 Bulbs	Lamp	30

Not all equipment is a candidate for retrofit. Therefore, the potential is then adjusted based on the number of buildings that are likely to have a retrofit opportunity for a given measure. For example, 30% of small groceries will have the need for an Auto Door Closer; however, almost all will need LED Case Lighting retrofits.

--

Finally, the combination of measures, type of establishments and total number of prospects per utility region are multiplied by the goal penetration rate (% of sites served) as determined by the level of utility funding contribution.

Site Type	Measure	Site Pen. Rate	% of Sites Retrofit	# Retrofits	Unit Type	Units/ Retrofit	Total Units	Total kWh	Total kW
Small Grocery	Gasket	15%	50%	2	Lin.Ft.	145	301	13,249	3
Small Grocery	Strip Curtain	15%	80%	3	Squ.Ft.	21	70	11,653	20
Small Grocery	Door Closer	15%	30%	1	Closer	2	2	1,997	0
Small Grocery	EC Motor Controller	20%	68%	4	Controller	1	4	16,500	-
Small Grocery	ASH Controls	10%	50%	1	Case.Lin.Ft.	25	35	13,669	0
Small Grocery	LED Case Lighting	23%	100%	6	Door	10	63	29,458	2
Small Grocery	EC Motor	26%	90%	6	Motor	8	52	56,874	4
Small Grocery	Low Wattage T8 Bulbs	5%	75%	1	Lamp	30	31	1,433	0
<b>Total</b>								<b>144,832</b>	<b>30</b>

In this example, KYC identified 28 small grocery buildings served by a particular utility. We expect 90% of those buildings to be eligible for Programmable ECMs. The utility wants to achieve 26% penetration of their KYC market potential for this measure. This equates to the retrofit of about 6.5 sites. With 8 motors at each site, the total projection of motor installations in this community is 52. Based on the documented savings and peak demand reduction per unit, Programmable EC Motor retrofits will save small grocers customers 56,874 kWh annually and reduce peak demand 4 kW.

This process is repeated to apply the same methodology for all measures, building types, and service territories and derive the total expected energy savings and peak demand reduction for each participating utility.

### 111. Participant Recruitment

Effective recruitment of program participants begins with the coordination of effort between the program administrators and the participating utility. Utilities will send a letter to non-residential accounts that include a commercial refrigeration load. Some utilities may also elect to make personal contact with some accounts.

Following the initial utility contact, *Keep Your Cool* initiates a postcard campaign to market the program. Postcards have proven to be very effective at generating interest. *Keep Your Cool* pays for first class postage so that returns from the initial mailing also provide change of address data which is used to further refine the mailing list. Subsequent mailings also increase the urgency of the message, up to a "Last Chance" card which is mailed during the last few months of the campaign (if funds remain unallocated). Postcards may be mailed up to six times throughout the two year campaign.

In addition to encouraging the customer to call the program's toll-free number (or their utility) the postcard advertises the KeepYourCool.org website, where they can get information on all aspects of the program.

Leads are followed up by site visits from program field representatives (Auditors). Auditors are fully trained in all aspects of the program, from identifying and clearly explaining energy saving opportunities through contract and financing details. KYC auditors present the program in a

professional manner on behalf of the local utility. If a utility chooses, their representative may accompany the KYC Auditor to further program credibility.

In addition to following up on the direct mail efforts, KYC Auditors systematically cold call all of the prospects in an area. When a decision maker is not available during the cold call, KYC auditors may leave behind a program folder which includes a one page overview of the program and specification sheets for the different technologies that may be suitable for their location.

Making sure that every customer has multiple interactions with the program is the key to avoiding lost opportunities. In previous experience, it can take some time for skeptical customers decide to participate. In these cases Auditors may make numerous callbacks in an effort to develop a relationship with the customer. Consequently, *Keep Your Cool* is able to reap dividends from the relationships created during previous, successful projects. These relationships will be built upon to encourage further adoption of the best practice measures.

#### **IV. Program Implementation**

During KYC site visits, the auditor will check existing refrigeration equipment for retrofit opportunities. Each piece of equipment is labeled with a unique serial number. Any work done to that equipment will include a reference to that serial number. Digital photographs will be taken to record the specifications and/or the condition of the equipment, and whether or not it is to be retrofit.

The auditor will record their findings and prepare an audit report for the customer. The audit report will detail all recommended energy efficient measures, the energy and monetary savings calculations, what incentives are available and what co-pays, if any, would be required. The Auditor will also collect all information required for incremental and final reporting requirements as specified by the CEC. The auditor will then provide a hard copy to the customer and a soft copy will be available.

The auditor will submit the audit report and documentation to KYC administration.

Auditors will follow up with customers who require extra time, have additional questions or must meet requirements specific to their business (e.g. Corporate approval) at weekly intervals until the customer accepts or declines participation. Auditors will keep customers up to date on changes in the program (e.g. program about to be fully subscribed) so they do not miss their opportunity to participate.

#### **V. Program Delivery**

Once customers become program participants, Auditors will be involved in coordinating installation times, responding to pre- and/or post-installation issues and verifying that they are satisfied with the final results.

Measures will, on average, be installed within two weeks. Occasionally, uncommon gaskets can have longer than average manufacturing/procurement timelines and may delay completion of measure installation. Previous experience has shown that program participants from the food service industry have strict requirements for when service providers can work in their facilities. The KYC program is careful to work around these requirements.

Once the measure installation is complete, the Participant will sign the Project Completion Form. Measures installed under the KYC program have at least a 1 year warranty on parts and installation.

#### **VI. Customer Interface**

Potential program participants will work with either the KYC Auditor directly or the KYC Program Manager. Once they have expressed an interest in participating in the program their eligibility must be

--

determined. Ideally, each participating utility will be able to provide a list of business customers who are potential participants in this program. This will allow for quick and accurate determination of a participant's eligibility. Once eligibility has been verified, a KYC Auditor will perform an inspection and generate a proposal.

In the event a participating utility is unable to provide a list of business customers, the Auditor or Program Manager will ask the potential participant for their utility account number. Assuming all business account holders are eligible to participate in the program, existence of an account number (from a current bill) would be considered proof of eligibility. If no current bill is available, the Auditor or Program Manager will contact the utility on the customer's behalf to determine eligibility.

## **VII. Quality Assurance**

A successful retrofit begins with an accurate audit. KYC auditors have experience inspecting thousands of locations, but ongoing training is mandatory. In 2009 all auditors completed the most recent curriculum which now consists of classroom based training conducted over 8 weeks. Auditor training includes principals of refrigeration and foundations of all available measures and technologies, including working demonstrations. The course culminates in Written and verbal exams to test comprehension and identify areas for review.

A new addition for KYC will be inclusion of digital photographs in each audit file. The goal is to maintain a complete archive of pre-existing conditions and equipment. Not only will this enhance overall reporting accuracy, but will help complete each retrofit as efficiently as possible (i.e. one trip instead of two).

Step two towards successful implementation is timely and accurate processing of the field data. Auditors submit audit reports, signed Program Agreements, and photographs, via an online portal to Humitech's scheduling system. Once submitted, bookkeeping creates an estimate of the job cost and applies that to the program budget. Meanwhile, the Operations Manager reviews the audit. Once all, if any, clarifications have been resolved with the auditor and/or customer, the project is approved for production. At this time materials are manufactured or otherwise procured for the project. A tentative install date is set and the customer is contacted to confirm the appointment. Once all approvals are in place the technician is scheduled.

Like auditors, technicians undergo a thorough training process but with a greater emphasis on fieldwork over classroom training. Technicians are always accompanied by a senior qualified and experienced technician. Only after all senior team members agree that a new technician is qualified to work independently will a trainee technician be permitted to work without supervision. Technicians are trained to adhere to manufacturer's installation specifications and, when applicable, *Small Commercial Mass Market Installation Standards 11*.

Once a project is completed, the person-in-charge at the site is required to inspect and sign-off on the work completed. Once the customer is satisfied, as indicated by signing the Project Completion Form, the project is submitted for post-installation verification.

## **VIII. Measure Verification**

Expected kWh savings and kW peak reduction provided in this proposal are based on studies by POUs, IOUs and The Department of Energy. Each of the values is in use by at least one other program and most come from a utility or government agency.

# Appendix B

Fees and Costs; not to exceed \$50,000

Measure (units)	Measure Cost/Unit	Total kWh Potential	Total kW Potential	Target Penetration Rate	100% DI Incentive Cost/kwh	Projected kWh Savings	Total Incentive Budget
Gaskets (Inr. Ft.)	\$8.00	637,758	148	5.0%	\$0.182	31,939	\$5,812.89
Strip Curtains (sq. ft.)	\$9.87	534,116	902	10.0%	\$0.059	53,412	\$3,156.75
Door Closers (ea.)	\$150.00	61,620	10	5.0%	\$0.187	3,081	\$576.75
EC Motors (ea.)	\$223.23	1,139,363	105	9.0%	\$0.203	102,185	\$20,743.52
ECM Fan Controls (ea.)	\$625.00	427,660	0	15.0%	\$0.213	64,167	\$13,667.58
ASH Controls (ea.)	\$58.00	396,312	8	10.0%	\$0.147	39,703	\$5,836.35
Total Incentive Costs							\$49,793.83





# CERTIFICATE OF LIABILITY INSURANCE

OP ID PN

DATE(MM/DD/YYYY)

07/26/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> CAL Insurance & Associates Inc License #0241094 2311 Taraval Street San Francisco CA 94116-2253 Phone: 415-661-6500 Fax: 415-661-2254	<b>CONTACT NAME:</b> <b>PHONE</b> (A/C, No, Ext): <b>FAX</b> (A/C, No): <b>E-MAIL</b> <b>ADDRESS:</b> <b>PRODUCER</b> <b>CUSTOMER ID #:</b> HUMIT-1														
<b>INSURED</b> Humitech of Northern Calif DBA: Bay Area Gasket Guy 253 Polaris Ave Mountain View CA 94042	<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: Golden Eagle Insurance Corp.</td><td>10836</td></tr><tr><td>INSURER B: Topa Insurance Company</td><td>18031</td></tr><tr><td>INSURER C: Preferred Employers Ins Co Inc</td><td>10900</td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr><tr><td>INSURER F:</td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Golden Eagle Insurance Corp.	10836	INSURER B: Topa Insurance Company	18031	INSURER C: Preferred Employers Ins Co Inc	10900	INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Golden Eagle Insurance Corp.	10836														
INSURER B: Topa Insurance Company	18031														
INSURER C: Preferred Employers Ins Co Inc	10900														
INSURER D:															
INSURER E:															
INSURER F:															

**COVERAGES****CERTIFICATE NUMBER****REVISION NUMBER**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURER	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY					
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY		CBP8577613	12/10/09		EACH OCCURRENCE \$ 1000000
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR			12/10/09		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1000000
						MED EXP (Any one person) \$ 5000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PERSONAL & ADV INJURY \$ 1000000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					GENERAL AGGREGATE \$ 2000000
						PRODUCTS - COMP/OP AGG \$ 2000000
						\$
A	AUTOMOBILE LIABILITY					
	<input checked="" type="checkbox"/> ANY AUTC		BA2325093	12/10/09	12/10/10	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000
	<input type="checkbox"/> ALL OWNED AUTOS					BODILY INJURY (Per person) \$
	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> NON-OWNED AUTOS					\$
						\$
						\$
B	UMBRELLA LIAB	<input type="checkbox"/> OCCUR	KL27089	12/10/09	12/10/10	EACH OCCURRENCE \$ 2000000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE 82000000
	<input type="checkbox"/> DEDUCTIBLE					\$
	<input checked="" type="checkbox"/> RETENTION \$ 10000					\$
C	WORKERS COMPENSATION AND EMPLOYERS LIABILITY		WKN138166-1	10/13/09	10/13/10	<input checked="" type="checkbox"/> WC STATUTORY LIMITS \$
	<input type="checkbox"/> ANY PROPRIETOR OFFICER/MEMBER (Mandatory in NH) EXCLUDED?					E.L. EACH ACCIDENT \$ 1000000
	<input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$ 1000000
						E.L. DISEASE - POLICY LIMIT \$ 1000000

DESCRIPTION OF OPERATIONS/ LOCATIONS/ VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

OF Lodi, and APPOINTED  
ADDITIONAL INSURED PER ATTACHED GECG602. PRIMARY WORDING APPLIES.

LODI

CITY OF LODI  
221 WEST PINE ST  
P.O. BOX 3006  
LODI CA 95241-1910

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following;

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SECTION I - COVERAGES**

**COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**2 Exclusions**

*item 2.g. 2) is replaced with the following:*

**2.9. 2) A watercraft you do not own that is:**

- a) less than 50 feet long; and
- b) Not being used to carry persons or property for a charge.

*item 2.g. 6) is added:*

- 6) An aircraft in which you have no ownership interest and that you have Chartered with crew.

*The last paragraph of 2. Exclusions is replaced with the following:*

Exclusions c. through n. do not apply to damage by fire, explosion, sprinkler leakage, or lightning to premises while rented to you, temporarily occupied by you with the permission of the owner, or managed by you under a written agreement with the owner. A separate limit of insurance applies to this coverage as described in **Section III - Limits of Insurance.**

**SECTION I - COVERAGES**

**COVERAGE G. MEDICAL PAYMENTS**

*If Medical Payments Coverage is provided under this policy, the following is changed:*

**3. Limits**

The medical expense limit provided by this policy shall be the greater of:

- a. \$10,000; or
- b. The amount shown in the declarations.

Coverage C. Medical Payments is primary and not contributing with any other insurance, even if that other insurance is also primary.

*The following is added:*

#### **COVERAGE D. PRODUCT RECALL NOTIFICATION EXPENSES**

##### **Insuring Agreement**

We will pay "product recall notification expenses" incurred by you for the withdrawal of your products, provided that:

- a. Such withdrawal is required because of a determination by you during the policy period, that the use or consumption of your products could result in "bodily injury" or "property damage"; and
- b. The "product recall notification expenses" are incurred and reported to us during the policy period.

The most we will pay for "product recall notification expenses" during the policy period is \$100,000.

#### **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

*item b. and d. are replaced with:*

- b. The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit" including actual loss of earnings up to \$500 a day because of time off from work.

#### **SECTION II - WHO IS AN INSURED**

*Item 4. is replaced with:*

4. Any subsidiaries, companies, corporations, firms, or organizations you acquire or form during the policy period over which you maintain a controlling interest of greater than 50% of the stock or assets, will qualify as a Named Insured if:
  - a) you have the responsibility of placing insurance for such entity; and
  - b) coverage for the entity is not otherwise more specifically provided; and
  - c) the entity is incorporated or organized under the laws of the United States of America.

However, coverage under this provision does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the entity, or "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the entity.

Coverage under this provision is afforded only until the end of the policy period, or the twelve (12) month anniversary of the policy inception date whichever is earlier.

#### **SECTION III - LIMITS OF INSURANCE**

*Paragraph 2 is amended to include:*

The General Aggregate Limit of Insurance applies separately to each "location" owned by you, rented to you, or occupied by you with the permission of the owner.

*Paragraph 6. is replaced with the following:*

6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises ~~while~~ rented to you, temporarily occupied by you with permission of the owner, or managed by you under a written agreement ~~with~~ the owner, arising out of any one fire, explosion or sprinkler leakage incident.

The Fire Damage Limit provided by this policy shall be the greater of:

- a. \$500,000. ~~or~~
- b. The amount shown in the Declarations.

#### **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**

*Item 2 a. is replaced with:*

##### **2. Duties In The Event ~~of~~ Occurrence, Offense, Claim or Suit**

- a. You must promptly ~~notify us~~. Your duty to promptly notify us is effective when ~~any~~ of your executive officers, ~~partners, members~~, or legal representatives is aware of ~~the~~ "occurrence", offense, claim, or "suit". Knowledge of an "occurrence", ~~offense~~, claim or ~~"suit"~~ by other employee(s) does not imply you also have ~~such~~ knowledge. ~~To~~ the extent possible, notice to ~~us~~ should include:
  - 1) ~~How~~, when and where the "occurrence" or ~~offense~~ took place;
  - 2) ~~The~~ names and addresses of any injured persons and witnesses; ~~and~~
  - 3) The nature and location of any injury ~~or~~ damage arising ~~out of the~~ "occurrence", offense, claim or "suit".

*item 4. b. 1) b) is replaced with:*

##### **b. Excess Insurance**

- 1) b) That is Fire, Explosion ~~or~~ Sprinkler Leakage insurance for premises while rented to you, temporarily occupied by you ~~with~~ permission of the owner, or managed by you under a written agreement with the owner: or

*Item 6. is amended to include:*

##### **6. Representations**

- d. If you unintentionally ~~fail~~ to disclose ~~any~~ hazards existing ~~at the~~ inception date ~~of~~ your policy, we will not deny coverage under this Coverage Part because ~~of~~ such failure. However, ~~this~~ provision does not affect our right to collect additional ~~premium~~ or exercise our right ~~of~~ cancellation or non-renewal.

*Item 8. is replaced with:*

##### **0. Transfer of Rights Of Recovery Against others To Us**

- a. If ~~the~~ insured ~~has rights~~ to recover all or part of any payment we have made under ~~this~~ Coverage Part, ~~those~~ rights are transferred to ~~us~~. The insured ~~must~~ do nothing after loss to impair them. At our request, the insured will bring suit or transfer those rights to ~~us~~ and help ~~us~~ enforce them.

- b. If required by a written "insured contract", we waive any right of recovery we may have against any person or organization because of payments we **make** for injury or damage arising out of your ongoing operations or "your work" **done** under that written "insured contract" for that **person** or organization and included in the "products-completed operations **hazard**".

*Item 10. and Item 11. are added:*

**10. Cancellation Condition**

If we cancel this policy for any reason other than nonpayment of premium we **will mail** or deliver written notice of **cancellation** to the first Named insured at least 60 days prior to the effective date of cancellation.

**11. Liberalization**

if we **adopt** a change in our forms or rules which would broaden your coverage without **an extra charge**, the broader coverage will apply to this policy. This extension is effective upon the **approval** of **such** broader coverage in your state.

**SECTION V-DEFINITIONS**

*The following definitions are added or changed:*

**9. "Insured contract"**

**a. Is changed to:**

- a. A **contract** for a lease of premises. However, that portion of **the contract** for a lease of premises that indemnifies **any** person or organization for damage by fire, explosion or sprinkler leakage to premises while rented to you, or temporarily **occupied by** you with **permission** of the owner, or managed by you under a **written agreement** with the owner is not an "insured contract".

**23 and 24 are added:**

- 23. "Location"** means **premises** involving the same or **connecting** lots, **or** premises whose connection is interrupted **only** by a street, roadway, **waterway** or right-of-way of a railroad.
- 24. "Product recall notification expenses"** means **the** reasonable additional expenses (including, but not limited to, **cost of** correspondence, newspaper and magazine advertising, radio or television announcements and **transportation cost**), necessarily incurred in **arranging** for the **return** of products, but excluding **costs** of the replacement products and the cash value of the damaged products,

**The following Provisions are also added to this Coverage Part**

**A. ADDITIONAL INSURED- BY CONTRACT, AGREEMENT OR PERMIT**

1. Paragraph 2 under SECTION II - **WHO IS AN INSURED** is amended to include as an insured any person or organization when you and such **person** or organization have agreed in writing in a contract, agreement or permit **that** such **person or** organization be added as an additional insured on your policy to provide **insurance** such as is afforded under this Coverage Part. Such person or organization is not entitled to any notices that we are required to send to the Named Insured and is an additional insured only with respect to **liability arising out of**:
- a. Your ongoing operations performed for that person **or** organization; or
- b. Premises or facilities owned or used by you.

With respect to provision ~~1.a.~~ above, a person's or organization's status as ~~an~~ insured under this endorsement ends when your operations for that person or organization are completed.

With respect to provision ~~1.b.~~ above, a person's or organization's status as an insured under this endorsement ends when their contract or agreement with you for such premises or facilities ends.

2 This endorsement provision A. does not apply:

- a. Unless the written contract or agreement has been executed, or permit has been issued, prior to the "bodily injury", "property damage" or "personal and advertising injury";
- b. To "bodily injury" or "property damage" occurring after:
  - (1) All work, including materials, parts or equipment furnished in connection with such work, in the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
  - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project;
- c. To the rendering of or failure to render any professional services including, but not limited to, any professional architectural, engineering or surveying services such as:
  - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
  - (2) Supervisory, inspection, architectural or engineering activities;
- d. To "bodily injury", "property damage" or "personal and advertising injury" arising out of any act, error or omission that results from the additional insured's sole negligence or wrongdoing;
- e. To any person or organization included as an insured under provision ~~B.~~ of this endorsement;
- f. To any person or organization included as an insured by a separate additional insured endorsement issued by us and made a part of this policy.

**B. ADDITIONAL INSURED – VENDORS**

Paragraph 2. under **SECTION II - WHO IS AN INSURED** is amended to include as ~~an~~ insured any person or organization (referred to below as "vendor") with whom you agreed, in a written contract or agreement to provide insurance such as is afforded under this policy, but **only** with respect to "bodily injury" or "property damage" arising out of "your products" which **are** distributed or **sold** in the regular course of the vendor's business, subject to the following additional exclusions:

■ The insurance afforded ~~the vendor~~ does not apply to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;

- d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or substitution of parts under **instructions from** the manufacturer, and then repackaged in the original container,
  - e. Any failure to make such inspections, adjustments, tests or servicing **as the vendor** has agreed to make or normally undertakes to make in the course of business, in connection **with the** distribution or sale of the products;
  - f. Demonstration, installation, **servicing** or repair operations, except such operations performed at the vendor's premises **in connection with the** sale **of** the product:
  - g. Products **which**, after distribution or sale by you, have been **labeled** or relabeled or used as a container, **part** or ingredient of any **other** thing or substance **by** or for **the** vendor; or
  - h. To "**bodily** injury" or "property damage" arising out of any act, error or omission that results from the additional insureds sole negligence or wrongdoing.
- 2 This insurance does not apply to any insured person or organization, from whom you have **acquired** such **products**, or any ingredient, part or container, entering into, accompanying or containing **such** products.

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### **ARTICLE 1 PARTIES AND PURPOSE**

#### **Section 1.1 Parties**

THIS AGREEMENT is entered into on August 6th, 2010, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and SBW Consulting, Inc. (hereinafter "CONSULTANT").

#### **Section 1.2 Purpose**

CITY selected the CONSULTANT to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONSULTANT for the Lodi VendingMiser Installation Program (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONSULTANT acknowledges that it is qualified to provide such services to CITY.

### **ARTICLE 2 SCOPE OF SERVICES**

#### **Section 2.1 Scope of Services**

CONSULTANT, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

#### **Section 2.2 Time For Commencement and Completion of Work**

CONSULTANT shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of **God**, etc., shall not be counted. CONSULTANT shall remain



in contact with reviewing agencies and make all efforts to review and return all comments.

**Section 2.3 Meetings**

CONSULTANT shall attend meetings as may be set forth in the Scope of Services.

**Section 2.4 Staffing**

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONSULTANT, or the CONSULTANT's subcontractor. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

**ARTICLE 3  
COMPENSATION**

**Section 3.1 Compensation**

CONSULTANT's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

**Section 3.2 Method of Payment**

CONSULTANT shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

**Section 3.3 Costs**

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

**Section 3.4 Auditing**

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

**ARTICLE 4  
:  
ROVISIONS**

**Section 4.1 Nondiscrimination**

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any sub consultant on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

## **Section 4.2 ADA Compliance**

In performing services under this Agreement, CONSULTANT shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

### **1.3 \_\_\_\_\_ and Responsibility for \_\_\_\_\_**

CONSULTANT to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONSULTANT, any subcontractor employed directly by CONSULTANT, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

## **Section 4.4 No Personal Liability**

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

## **Section 4.5 Responsibility of CITY**

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

## **Section 4.6 Insurance Requirements for CONSULTANT**

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

## **Section 4.7 Successors and Assigns**

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY

#### **Section 4.8 Notices**

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY:                      City of Lodi  
                                     221 West Pine Street  
                                     P.O. Box 3006  
                                     Lodi, CA 95241-1910

To CONSULTANT:        SBW Consulting, Inc.  
                                     2820 Northup Way, Suite 230  
                                     Bellevue, WA 98004

#### **Section 4.09 Cooperation of CITY**

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

#### **Section 4.10 CONSULTANT is Not an Employee of CITY**

CONSULTANT agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONSULTANT meet specific standards without regard to the manner and means of accomplishment thereof.

#### **Section 4.11 Termination**

CITY may terminate this Agreement, with or without cause, by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.

**Section 4.12 Confidentiality**

CONSULTANT agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONSULTANT and clearly marked by CONSULTANT as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONSULTANT. CONSULTANT acknowledges that CITY is subject to the California Public Records Act.

**Section 13 Applicable Law, Severability, and Attorney's Fees**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

**Section 4.14 City Business License Requirement**

SBW Consulting, Inc. acknowledges that Lodi Municipal Code Section 3.01.020 requires SBW Consulting, Inc. to have a city business license and SBW Consulting, Inc. agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

**Section 4.15 Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

**Section 4.16 Integration and Modification**

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

**Section 4.17 Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**Section 4.18 Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during CONSULTANT's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

**Section 4.19 Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

By \_\_\_\_\_  
RANDI JOHL  
CITY CLERK

By \_\_\_\_\_  
KONRADT BARTLAM  
INTERIM CITY MANAGER

APPROVED AS TO FORM:  
D. STEPHEN SCHWABAUER, City Attorney

By \_\_\_\_\_  
Janice D. Magdich  
Deputy City Attorney 

By:   
Michael Baker  
SBW Consulting, Inc.  
Its: Vice-president

Attachments:

Exhibit A – Scope of Services

Exhibit B – Fee Proposal

Exhibit C – Insurance Requirements

## **Exhibit A – Scope of Services**

### **SCOPE OF SERVICES**

SBW agrees to administer the Lodi VendingMiser Installation Program (LVIP) which would be offered by the utility to customers with cold beverage vending machines for the City of Lodi, in strict conformity with the terms and conditions of this contract. SBW will provide all necessary implementation services to deliver the Lodi VendingMiser Installation Program under this agreement.

Implementation Services will be provided by SBW. These services will include:

- Contacting potential customers who may have cold beverage vending machines to determine their eligibility and interest in the program.
- Completing 111 VendingMiser installations with eligible customers (using SBW's best efforts to locate 111 eligible machines) during the period September 1<sup>st</sup> 2010 to October 31<sup>st</sup>, 2010.
- Completing 10% (at least 12) QC audits during the period September 1<sup>st</sup> 2010, to October 31<sup>st</sup>, 2010
- Provide database reporting and picture verification reporting to Lodi on a monthly basis during the period September 1<sup>st</sup> 2010, to November 30<sup>th</sup>, 2010

### **TERMS OF CLIENT**

The term of this agreement shall be from the earliest possible implementation date after Lodi City Council approval, through December 31, 2010, or whenever funds are exhausted, whichever comes earlier.

## **ADVERTISING, MARKETING AND PUBLIC RELATIONS**

Lodi and SBW will share in the responsibility of any marketing and public relations associated with this project.

SBW will obtain market intelligence from City of Lodi Electric Utility (LEU) customer representatives. SBW will interview LEU staff and determine the best contact strategy for each of the most promising customers served by LEU. In particular for larger or more sensitive customers, SBW or LEU staff will make contact via the best means (e-mail, telephone, letter or in-person) to inform the customer that SBW has joined the team, is a trusted partner, and should be given a chance to describe the program and its benefits.

## **INSURANCE**

For actions performed under this agreement, SBW agrees to maintain all necessary insurance requirements set forth by Lodi (as identified in the instructions/requirements for insurance coverage page).

## **CONTRACT PRICE AND TERMS**

SBW will invoice Lodi \$225/unit for each installed Vending Miser. This unit price covers all equipment, program management, status reporting and installation services. Invoices will be payable within thirty (30) days of the invoice date. The total project budget cost will not exceed \$25,000.

\_\_\_\_\_  
**WITNESSES**

SBW Consulting, Inc. will obtain a City of Lodi business license and pay the appropriate fees. No additional anticipated licenses required to comply with this project.

## **INDEMNITY CLAUSE**

SBW shall indemnify, defend, and hold harmless the City of Lodi, the City of Lodi Electric Utility, its City Council, Directors, Officers, Agents, and employees against all claims,



**loss**, damage, expense, and liability arising out of, or in any way connected with the performance of this contract and excepting only such **loss**, damage, or liability as may be caused by the intentional acts or sole negligence of the City of Lodi, and the City of Lodi Electric Utility.

**TERMINATION**

This contract will be terminated if **SBW** is unable to obtain product (VendingMisers) from USA Technologies, Inc. (the manufacturer) for any reason.

**Exhibit B – Fee Proposal**

Item	Budget
<b>Complete 111 VendingMiser installations (using SBW's best efforts to locate 111 eligible machines) at \$225/installed unit.</b> This unit price covers all equipment, program management, status reporting and installation services.	<b>24,975</b>
<b>Total</b>	<b>\$24,9751</b>

# Exhibit C - Insurance Requirements

ACORD <sup>®</sup>		CERTIFICATE OF LIABILITY INSURANCE		OF ID. SR. SRMCO-1	DATE (MM/DD/YYYY) 07/30/10
<b>PRODUCER</b> <b>Sprague Israel Giles</b> <b>1501 Fourth Avenue, Suite 2000</b> <b>Seattle WA 98101-1637</b> <b>Phone: 206-623-7035 Fax: 206-682-4993</b>		<b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.</b>			
<b>INSURED</b>  <b>SEM Consulting, Inc.</b> <b>2820 Northrup Way Ste 230</b> <b>Bellevue WA 98004-1119</b>		<b>INSURERS AFFORDING COVERAGE</b>		<b>NAIC #</b>	
		<b>INSURER A: American Casualty Company</b>		<b>20443</b>	
		<b>INSURER B: Continental Casualty Company</b>			
		<b>INSURER C:</b>			
		<b>INSURER D:</b>			
		<b>INSURER E:</b>			
<b>COVERAGES</b> THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSR ADD'L TR (INSR)	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> <b>CLAIMS MADE</b> <input checked="" type="checkbox"/> <b>OCCUR</b>  <b>GEN. AGGREGATE LIMIT APPLIES PER:</b> <input type="checkbox"/> <b>POLICY</b> <input checked="" type="checkbox"/> <b>PER</b> <input type="checkbox"/> <b>LOC</b>	B1029719995	04/28/10	04/28/11	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADY INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/CPAGG \$2,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> <b>ANY AUTO</b> <input type="checkbox"/> <b>ALL OWNED AUTOS</b> <input type="checkbox"/> <b>SCHEDULED AUTOS</b> <input checked="" type="checkbox"/> <b>HIRE AUTOS</b> <input checked="" type="checkbox"/> <b>NON-OWNED AUTOS</b>	B1029719995	04/28/10	04/28/11	COMBINED SINGLE LIMIT (EA accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> <b>ANY AUTO</b>				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	<b>EXCESS / UMBRELLA LIABILITY</b> <input type="checkbox"/> <b>OCCUR</b> <input type="checkbox"/> <b>CLAIMS MADE</b>  <b>DEDUCTIBLE</b> <b>RETENTION \$</b>				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> <input type="checkbox"/> <b>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED?</b> (Mandatory in WA) <input type="checkbox"/> <b>YES, describe under SPECIAL PROVISIONS below</b> <b>OTHER</b>	B1029719995 <b>STOP GAP</b>	04/28/10	04/28/11	<input checked="" type="checkbox"/> <b>WCB/TAU</b> <input checked="" type="checkbox"/> <b>UTR</b> <b>EL. EACH ACCIDENT</b> \$1,000,000 <b>EL. DISEASE - EA EMPLOYEE</b> \$1,000,000 <b>EL. DISEASE - POLICY LIMIT</b> \$2,000,000
<b>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS</b> the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents and Employees are additional insured with respects Liability arising out of operations by or on behalf of the named insured for General Liability & Insurance is Primary & Non-Contributory per form SE146968A attached.					
<b>CERTIFICATE HOLDER</b>  <b>City of Lodi</b> <b>221 W. Pine Street</b> <b>P.O. Box 3006</b> <b>Lodi CA 95241-3006</b>			<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. <b>AUTHORIZED REPRESENTATIVE</b> 		

ACORD 25 (2008/01)

The ACORD name and logo are registered marks of ACORD

© 1999-2009 ACORD CORPORATION. All rights reserved.



# CERTIFICATE OF LIABILITY INSURANCE

 OP ID SR  
SBNCO-1

 DATE (MM/DD/YYYY)  
07/30/10

<b>PRODUCER</b> Sprague Israel Giles 1501 Fourth Avenue, Suite 2000 Seattle WA 98101-1637 Phone: 206-623-7035 Fax: 206-682-4993		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
<b>INSURED</b>  SEW Consulting, Inc. 2820 Northrup Way Ste 230 Bellevue WA 98004-1419		<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
		INSURER A: American Casualty Company	
		INSURER B: Continental Casualty Company	20443
		INSURER C:	
		INSURER D:	
		INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	B1029719995	04/28/10	04/28/11	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	B1029719995	04/28/10	04/28/11	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO  <b>EXCESS / UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$ EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	B1029719995 STOP GAP	04/28/10	04/28/11	WC STATUS: <input checked="" type="checkbox"/> TOTL- E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000
	OTHER				

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents and Employees are additional insured with respects Liability arising out of operations by or on behalf of the named insured for General Liability & Insurance is Primary & Non-Contributory per form SB146968A attached.

## CERTIFICATE HOLDER

City of Lodi 221 W. Pine Street P.O. Box 3006 Lodi CA 95241-3006	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
---	---

ACORD 25 (2009/01)

© 1988-2009 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

**IMPORTANT: THIS ENDORSEMENT CONTAINS DUTIES THAT APPLY TO THE ADDITIONAL INSURED IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT. SEE PARAGRAPH C., OF THIS ENDORSEMENT FOR THESE DUTIES.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BLANKET ADDITIONAL INSURED ENDORSEMENT  
WITH PRODUCTS-COMPLETED OPERATIONS COVERAGE  
&  
BLANKET WAIVER OF SUBROGATION  
Architects, Engineers and Surveyors**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM  
BUSINESSOWNERS COMMON POLICY CONDITIONS

- A. WHO IS AN INSURED (Section C.)** of the Businessowners Liability Coverage Form is amended to include as an insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement; but, the written contract or written agreement must be:
1. Currently in effect or becoming effective during the term of this policy; and
  2. Executed prior to the "bodily injury," "property damage," or "personal and advertising injury."
- B.** The insurance provided to the additional insured is limited as follows:
1. That person or organization is an additional insured solely for liability due to your negligence specifically resulting from "your work" for the additional insured which is the subject of the written contract or written agreement. No coverage applies to liability resulting from the sole negligence of the additional insured.
  2. The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.
  3. The coverage provided to the additional insured within this endorsement and section titled **LIABILITY AND MEDICAL EXPENSE DEFINITIONS - "Insured Contract" (Section F.9.)** within the Businessowners Liability Coverage Form, does not apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" unless required by the written contract or written agreement.
  4. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:
    - a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project of which you serve as construction manager; or
    - b. Inspection, supervision, quality control, engineering or architectural services done by you on a project of which you serve as construction manager.
  5. This insurance does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of:
    - a. The construction or demolition work while you are acting as a construction or demolition contractor. This exclusion does not apply to work done for or by you at your premises.
- C. BUSINESSOWNERS GENERAL LIABILITY CONDITIONS - Duties In The Event of Occurrence, Offense, Claim or Suit (Section E.2.)** of the Businessowners Liability Coverage Form is amended to add the following:
- An additional insured under this endorsement will as soon as practicable:
1. Give written notice of an occurrence or an offense to us which may result in a claim or "suit" under this insurance;

2. Tender the defense and indemnity of any claim or "suit" to us for a loss we cover under this Coverage Part;
3. Tender the defense and indemnity of any claim or "suit" to any other insurer which also has insurance for a loss we cover under this Coverage Part; and
4. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a claim or "suit" from the additional insured.

**D. OTHER INSURANCE** (Section **H. 2. & 3.**) of the Businessowners Common Policy Conditions are deleted and replaced with the following:

2. This insurance is excess over any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and noncontributing to the additional insured's own coverage. This insurance is excess over any other insurance to which the additional insured has been added as an additional insured by endorsement.
3. When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured

against that "suit" If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**E. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US** (Section **K.2.**) of the Businessowners Common Policy Conditions is deleted and replaced with the following:

2. We waive any right of recovery we may have against any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of your ongoing operations or "your work done under a contract with that person or organization and included within the "products-completed operations hazard."

Washington ~~State~~ Department of  
Labor and Industries



Employer Liability  
Certificate

**Department of Labor and Industries**

**Employer Liability Certificate**

Date: 07/01/2010

**UBI #** 601 261 355

Legal Business Name: SBW CONSULTING INC

Account #: 584,869-00

Doing Business As' Name: SBW CONSULTING INC

Estimated Workers Reported: Quarter 1 of Year 2010 "11 to 20 Workers"  
(See Description Below)

Workers' Comp Premium **Status**: Account is current. **Firm has** voluntarily reported and paid their premiums.

Licensed Contractor? **No**

Account Representative: T2 / ANNA COLEMAN (360)902-5634 - Email:  
NORN235@lni.wa.gov

**What does "Estimated Workers Reported" mean?**

Estimated workers reported represents the number of full time position requiring at least 480 hours of work per calendar quarter. A single **480** hour position may be filled by one person, or several **part** time workers.

**Industrial Insurance Information**

Employers report and pay premiums each quarter based on hours of employee work already performed, and are liable for premiums found later to be due. Industrial insurance accounts have no policy periods, cancellation dates, limitations of coverage or waiver of subrogation (See RCW 51.12.050 and 51.16.190).

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### **ARTICLE 1 PARTIES AND PURPOSE**

#### **Section 1.1 Parties**

THIS AGREEMENT is entered into on August 18 2010, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and Apogee Interactive, Inc. (hereinafter "CONSULTANT").

#### **Section 1.2 Purpose**

CITY selected the CONSULTANT to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONSULTANT for Online applications of HomeEnergySuite, CommercialEnergySuite and BillingInsights. (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONSULTANT acknowledges that it is qualified to provide such services to CITY.

### **ARTICLE 2 SCOPE OF SERVICES**

#### **Section 2.1 Scope of Services**

CONSULTANT, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

#### **Section 2.2 Time For Commencement and Completion of Work**

CONSULTANT shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONSULTANT shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be counted against CONSULTANT's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONSULTANT shall remain





in contact with reviewing agencies and make all efforts to review and return all comments.

**Section 2.3 Meetings**

CONSULTANT shall attend meetings as may be set forth in the Scope of Services.

**Section 2.4 Staffing**

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONSULTANT, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

**Section 2.5 Subcontracts**

Unless prior written approval of CITY is obtained, CONSULTANT shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

**ARTICLE 3  
COMPENSATION**

**Section 3.1 Compensation**

CONSULTANT's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.



CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

**Section 3.2 Method of Payment**

CONSULTANT shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

**Section 3.3 Costs**

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

**Section 3.4 Auditing**

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

**ARTICLE 4**  
**MISCELLANEOUS PROVISIONS**

**Section 4.1 Nondiscrimination**

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any sub



consultant on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

**Section 4.2 ADA Compliance**

In performing services under this Agreement, CONSULTANT shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

**Section 4.3 indemnification and Responsibility for Damage**

CONSULTANT to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONSULTANT, any subcontractor employed directly by CONSULTANT, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

**Section 4.4 No Personal Liability**

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

**Section 4.5 Responsibility of CITY**

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

**Section 4.6 Insurance Requirements for CONSULTANT**

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

**Section 4.7 Successors and Assigns**

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY



#### **Section 4.8 Notices**

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi  
221 West Pine Street  
P.O. Box 3006  
Lodi, CA 95241-1910

To CONSULTANT: James Malcom  
Apogee Interactive, Inc.  
100 Crescent Center Pkwy, Ste 450  
Tucker, GA 30084

#### **Section 4.09 Cooperation of CITY**

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

#### **Section 4.10 CONSULTANT is Not an Employee of CITY**

CONSULTANT agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONSULTANT meet specific standards without regard to the manner and means of accomplishment thereof.

#### **Section 4.11 Termination**

CITY may terminate this Agreement, with or without cause, by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.



**Section 4.12 Confidentiality**

CONSULTANT agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONSULTANT and clearly marked by CONSULTANT as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONSULTANT. CONSULTANT acknowledges that CITY is subject to the California Public Records Act.

**Section 4.13 Law, Jurisdiction, Severability, and Attorney's Fees**

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

**Section 4.14 City Business License Requirement**

LaRue Communications acknowledges that Lodi Municipal Code Section 3.01.020 requires LaRue Communications to have a city business license and LaRue Communications agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

**Section 4.15 Captions**

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

**Section 4.16 Integration and Modification**

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.



**Section 4.17 Contract Terms Prevail**

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

**Section 4.18 Ownership of Documents**

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during CONSULTANT's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

**Section 4.19 Authority**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.


CITY OF LODI, a municipal corporation

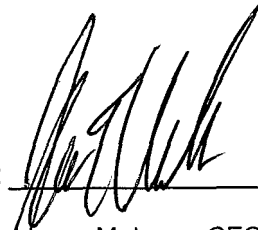
ATTEST:

By \_\_\_\_\_  
RANDI JOHL  
CITY CLERK

By \_\_\_\_\_  
KONRADT BARTLAM  
INTERIM CITY MANAGER

APPROVED AS TO FORM:  
D. STEPHEN SCHWABAUER, City Attorney

By \_\_\_\_\_  
Janice D. Magdich  
Deputy City Attorney 

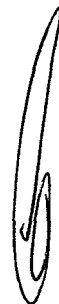
By:   
James Malcom, CFO/COO  
Apogee Interactive, Inc.

Attachments:

Exhibit A – Scope of Services

Exhibit B – Fee Proposal

Exhibit C – insurance Requirements

A handwritten signature or mark, possibly a stylized 'G' or '6', located in the bottom right corner of the page.

## APPENDIX A Scope of Services

APOGEE agrees to administer the **HomeEnergySuite (HES)** and **CommercialEnergySuite (CES)** with the addition of **BillingInsights (BI)** for the City of Lodi, in strict conformity with the terms and conditions of this contract. APOGEE will provide all necessary implementation services to deliver the online applications, including all maintenance, under this agreement.

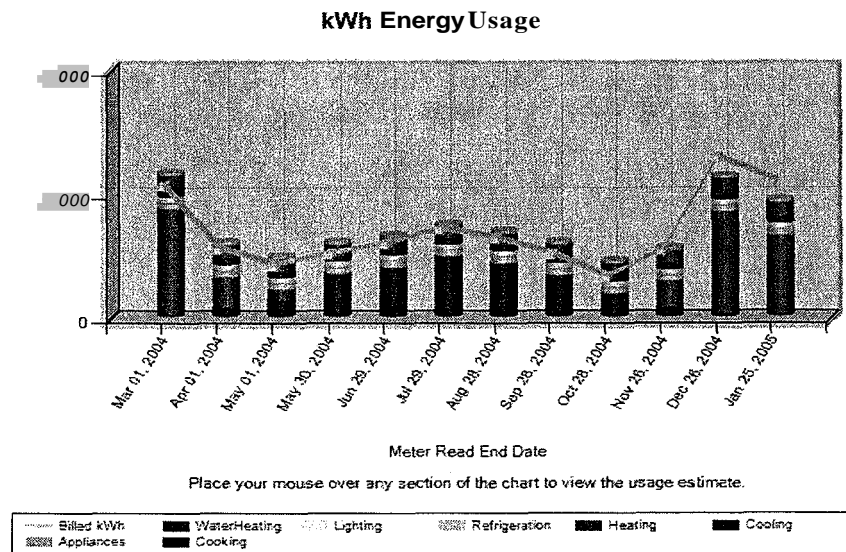
Implementation Services will be provided by APOGEE, continuing the services provided for the last two years. These services include:

- HomeEnergyCalculator online audit tool
- Kid's Korner educational content
- Residential Energy Systems reference library content
- Lighting and Appliance calculators
- InteractiveEnergyHome educational application
- CommercialEnergyCalculator online audit tool\*
- Commercial Energy Systems reference library content\*
- Understanding Demand online course\*

New for 2010-2011 is the addition of BillingInsights, adding actual customer billing data to the analysis. It enables diagnostics of high bill questions, either self-serve by the customer, or facilitated by your call center. It requires a customer to log in to use this feature; ideally this can be accomplished with an existing account login if that is available.

By superimposing the actual usage information, customers and your customer service agents can easily diagnose high bill concerns. Many of these are easily identified as the pattern of energy use is revealed in the monthly

The patterns which from the predicted and actual energy use help explain anomalies in billing. The program supports intelligent scripting to prompt customers or customer service agents on likely causes for discrepancies in usage.



Because it is linked to the same analytical engine, customer service agents can proactively suggest solutions to high bill concerns, such as weatherstripping or changing temperature setpoints and immediately provide feedback on the savings for those measures.

BillingInsights is a simple upgrade to the HomeEnergySuite package, and requires minimal involvement by your IT department to provide the necessary data extracts.



## **APPENDIX B**

### **Fee Proposal**

There is no change for the fees for the existing subscription elements, Home Energy Suite and CommercialEnergySuite. That annual subscription totals \$16,300.

The BillingInsights option can be added for a one time setup fee of \$4,500 using our existing data exchange format with your billing system. The annual subscription for this addition would be \$5,500 for the residential customer base, and \$3,500 for the commercial customers.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a single name.

**APOGEE Interactive, Inc**  
**BillingInsights™**

**TERMS AND CONDITIONS**

**1. General**

The following terms and conditions ("Terms and Conditions") provide for terms that are common to this Agreement, including all Schedules. In the event of a conflict between these Terms and Conditions and any Schedule, the Schedule will control, unless expressly stated to the contrary in these Terms and Conditions.

**2. Definitions**

As used in this Agreement, and in addition to any other terms defined in this Agreement, the capitalized terms used herein will have the meanings set forth in the Glossary at the end of these Terms and Conditions.

**3. Services**

**3.1 Network Services.**

Licensor will provide Company and the Users with access to the applicable System residing on the Licensor Server ("Network Services") provided that Company and each User must provide its own equipment and services necessary to access the Internet.

**3.2 Maintenance Services**

Licensor will provide maintenance services for Company as described on Schedule B ("Maintenance Services").

**4. RIGHTS RESERVED**

As between Licensor and Company, title, ownership rights, and Intellectual Property Rights in and to the BillingInsights™ Billing Question Resolution System (Bf) and the related Marks (and all Derivative Works thereto and copies thereof, but excluding Company Materials) will remain with Licensor and its suppliers or licensors. Company agrees to abide by the patent and copyright laws and all other applicable laws of the United States including, but not limited to, export control laws. Company acknowledges that the System and all related Source Code remains Proprietary Information of Licensor and/or its suppliers, that the Source Code is not licensed to Company by this Agreement or any Schedule, and Licensor will not deliver a copy of the Source Code or any applications comprising the System to Company. Except as set forth in the Schedules, no right or implied license or right of any kind is granted to Company regarding the System or Deliverables, including, but not limited to, any right to use, reproduce, market, sell, translate, distribute, transfer, adopt, disassemble, decompile, reverse engineer the System or the Documentation thereof, or any portions thereof, or obtain possession of any Source Code or other technical material relating to the System. Company further agrees not to lease, license, sell, sublicense or otherwise transfer the System or Network Services except as expressly authorized by this Agreement. In addition, Company agrees not to modify the System, create Derivative Works or attempt to decipher, decompile, disassemble or reverse engineer the System. The System and Services provided hereunder are "commercial items" as that term is defined at 48 CFR 2.101 consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 and other applicable acquisition regulations and are provided to Company (and the Users; including the U.S. Government, if applicable) only as a commercial item. Consistent with 48 CFR 12.212, 48 CFR 227.7102, and 48 CFR 227.7202, all U.S. Government Users, if any, acquire the Software and its associated documentation with only those rights and subject to the restrictions set forth in this Agreement. Notwithstanding the foregoing, the Software may not be acquired by the U.S. Government pursuant to a contract incorporating clauses prescribed by 48 CFR 27.4, 48 CFR 227.71 or 48 CFR 227.72.

**5. Fees and Payment Terms**

**5.1 Services**

For the Services provided under this Agreement, Company will pay Licensor the fees in the amount and manner set forth in the Letter Agreement for Company's use of Bf

**5.2 Expenses**

Company will pay or reimburse Licensor for, any out-of-pocket expenses, including, without limitation, travel and travel-related expenses, incurred by Licensor at the written request of or with the written approval of Company in connection with the performance of this Agreement. Reasonable and customary expenses incurred by Licensor, including without limitation expenses incurred for travel, including local transportation, lodging and meals, will be billed to Company at Licensor's actual cost

**5.3 Taxes**

Customer Initials \_\_\_\_\_

The fees and expenses due to Licensor as set forth in this Agreement are net amounts to be received by Licensor, exclusive of all sales, use, withholding, excise, value added, ad valorem taxes or duties incurred by Company or imposed on Licensor in the performance of this Agreement or otherwise due as a result of this Agreement. This Section will not apply to taxes based solely on Licensor's net income. Company will be solely responsible for and will pay any and all amounts required in the foreign location to be withheld, charged, deducted, or assessed against such payment amounts, and will promptly furnish Licensor with certificates evidencing payment of such amounts.

**5.4 Offset**

Fees and expenses due from Company under this Agreement may not be withheld or offset by Company against other amounts for any reason.

**6. Technical Requirements**

Company must have equipment, software, and Internet access meeting the requirements set forth on Schedule D to be able to use the System and the Network Services. Acquiring, installing, maintaining and operating equipment, Company Materials, and Internet access is solely Company's responsibility, except as otherwise expressly provided in Schedule D. Licensor neither represents nor warrants that the System will be accessible through any web browser release other than those web browser releases indicated in Schedule D.

**7. Nondisclosure and Confidentiality**

**7.1 Obligations**

The Receiving Party will hold in confidence and, without the consent of the Disclosing Party, will not use, reproduce, distribute, transmit, transfer, or disclose, directly or indirectly, in any form, by any means, or for any purpose, the Disclosing Party's Proprietary Information. The Receiving Party may only disclose the Proprietary Information to its employees and independent contractors who (i) have a need to know such information in connection with performing under this Agreement; and (ii) are obligated in writing not to disclose the Disclosing Party's Proprietary Information. Without limiting the foregoing, the Receiving Party will exercise at least the same standard of care in protecting the Disclosing Party's Proprietary Information as the Receiving Party does with its own Proprietary Information.

**7.2 Identification**

All Proprietary Information, except as provided below, will be marked as confidential if in writing or identified as confidential at the time of disclosure or if conveyed orally. Notwithstanding the foregoing, Company agrees that any Proprietary Information in whatever form relating to the design, functionality, operational methods or coding of or relating to the System, will be deemed the Proprietary Information of Licensor.

**7.3 Exceptions**

Each party's obligations under this Section 7 will not apply to information which is shown by written evidence to have: (i) become a matter of public knowledge through no fault of or action by the Receiving Party; (ii) been rightfully in the Receiving Party's possession prior to disclosure by the Disclosing Party; (iii) been rightfully obtained by the Receiving Party subsequent to disclosure to the Receiving Party from a third party who is lawfully in possession of such proprietary information without restriction; (iv) been independently developed by the Receiving Party without resort to the Disclosing Party's Proprietary Information; or (v) required by law or judicial order to be disclosed, provided that prior written notice of such required disclosure is furnished to the Disclosing Party as soon as practicable in order to afford the Disclosing Party an opportunity to seek a protective order.

**7.4 Return of Information**

Whenever requested by the Disclosing Party, the Receiving Party will immediately return the Proprietary Information to the Disclosing Party or destroy all manifestations of the Proprietary Information and provide the Disclosing Party written certification of such destruction.

**7.5 Right to Use Company Information**

Company grants to Licensor the non-exclusive right to use Company's Proprietary Information (including any data) obtained under this Agreement for Licensor's internal purposes in order to perform the Services and as otherwise set forth in this Agreement. Nothing in this paragraph will limit Licensor's obligations under this Section 7 in any way.

**7.6 Term of Obligations**

The Receiving Party's obligations with regard to the Disclosing Party's Trade Secrets remain in effect for as long as such information remains a trade secret under applicable law. The Receiving Party's obligations with regard to the Disclosing Party's Confidential Information shall remain in effect during the

Term of this Agreement and for five (5) years after the expiration or termination of this Agreement for any reason. Notwithstanding the foregoing, any previously executed nondisclosure agreement between Company and Licensor having nondisclosure provisions shall continue in full force and effect. To the extent of any inconsistency or ambiguity between the non-disclosure obligations in such existing agreement and the non-disclosure obligations in this Agreement, the non-disclosure obligations of this Agreement shall govern and control to the extent of such conflict.

#### 7.7 No Restrictions on Deliverables

In the course of Licensor performing Services, Licensor may use enhancements, discoveries, processes, methods, designs and know-how, whether or not copyrightable or patentable, which Licensor may develop during the Term of this Agreement and Company acknowledges that Licensor may use such enhancements, processes, methods, designs and know-how in its business operations with its other customers

### 8. Grant Of Rights

#### 8.1 Company Name and Marks

Any use by Licensor of Company's name, or any Company Marks, whether on the Services Website, as part of the Services, in press releases, marketing, advertising or other materials shall be subject to Company's express prior review and written approval. The granting of such approval to be in Company's sole discretion. Subject to the foregoing, Company shall provide Licensor with the Company Marks in the format, resolution, and size and via the method agreed upon by the parties, including updates as necessary, to enable Licensor to perform its obligations under this Agreement. During the Term, Company hereby grants to Licensor a non-exclusive, royalty free, and worldwide license to use the Company Marks (a) on the Services Website and as part of the Services, (b) on agreed upon press releases, marketing, advertising, or other materials, and (c) as otherwise agreed, solely to perform its obligations under this Agreement. Licensor understands and agrees that its use of the Company Marks in connection with this Agreement shall not create any right, title or interest in or to such Company Marks and that all such use and goodwill associated with the Company Marks will inure to the benefit of Company and its licensors. Licensor shall not make use of the Company Marks except as specifically provided for in this Agreement or as expressly authorized in writing by Company prior to such use

#### 8.2 Company Materials

Subject to the terms and conditions of this Agreement, Company hereby grants to Licensor, during the Term, a non-exclusive, non-transferable, and non-assignable license to use and display the Company Materials: (i) in providing the Services; (ii) on mutually agreed upon press releases, marketing, advertising or other materials; and (iii) as otherwise expressly agreed in writing. Any use of the Company Materials, whether in performance of the Services or on marketing, advertising, or other materials shall be subject to this Section 8.3. Licensor shall not use the Company Materials other than as set forth in this Agreement. Notwithstanding the foregoing, Licensor may reformat Company Materials to fit the format necessary for performance of the Services.

#### 8.3 Reservation of Rights

Company owns and will retain all right, title and interest in its Marks and Materials including without limitation, those Marks and Materials currently used or any which may be developed in the future. Licensor will not copy, distribute, reproduce or use Company's Marks or Materials except as expressly permitted under this Agreement.

#### 8.4 User Data

The Company will own all right, title and interest in and to any information arising out of, or related to, its Users, including all information created as a result of the provision of Services for use by such Users (collectively, "User Data"). As between Licensor and Company, Company will own all User Data that is created, collected, or otherwise generated by Company or Licensor in connection with the Services

### 9. Protective Legends

Company will not alter, distort, or remove any confidential, proprietary, copyright, trademark, trade secret, or patent legends that appear on or in the System or Documentation, or attempt to do so.

### 10. Limited Warranties

#### 10.1 Software Warranty

Licensor warrants that for a period of sixty (60) days after the Access Date (the "Software Warranty Period"), the System will substantially conform to the Documentation delivered by Licensor to Company or available on the Services Website. If Licensor receives written notice during the Software Warranty Period that the System does not perform as warranted, Licensor will undertake to correct the Software free of charge. THE FORGOING IS COMPANY'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF

THE WARRANTY. Licensor warrants that (i) it owns or has sufficient rights to the System to grant all licenses granted on Schedule A and (ii) it has the right to enter into the Agreement. The warranty set forth above is made to and for the benefit of Company only. The warranty will not apply if the System has been used outside the scope of the license, modified other than by Licensor, altered or operated in an unauthorized manner. If Licensor investigates an "error" pursuant to Company's request and such "error" is found to be caused by operator error or erroneous system configuration (such as improper hardware, Company Materials, peripheral equipment, cabling, operating environment, improper data supplied by Company, misuse, or any other cause not inherent in the System Software), Licensor reserves the right to charge and Company shall pay Licensor's then current rates for such investigation.

#### 10.2 Company Warranties

Company warrants to Licensor that (a) during the Term of this Agreement, Company will use the Services, exercise its rights, and perform any obligations under this Agreement in compliance with all applicable laws and regulations and in accordance with this Agreement, and (b) Company holds all rights necessary to any third party intellectual property provided by Company to Licensor for Licensor's use pursuant to this Agreement.

### 11. Warranty Disclaimer

OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 10 HEREIN OR IN A SCHEDULE, NEITHER LICENSOR, ITS AFFILIATES, LICENSORS OR SUPPLIERS, NOR THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES MAKES ANY EXPRESS OR IMPLIED WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO COMPANY, OR ANY OTHER PERSON OR ENTITY WITH RESPECT TO THE DELIVERABLES PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY OF NON-INFRINGEMENT, THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE EXPRESSLY EXCLUDED AND DISCLAIMED. NO WARRANTY IS MADE THAT USE OF THE SYSTEM, NETWORK SERVICES OR DELIVERABLES WILL BE ERROR FREE OR UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE DELIVERABLES WILL BE CORRECTED, OR THAT THE DELIVERABLES FUNCTIONALITY WILL MEET COMPANY'S REQUIREMENTS.

### 12. Limitation of Liability

#### 12.1 LIMITATION OF REMEDY

IN NO EVENT WILL LICENSOR, ITS AFFILIATES, LICENSORS OR SUPPLIERS, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO COMPANY, OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS OF GOODWILL IN ANY WAY RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SYSTEM OR DELIVERABLES OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF LICENSOR HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

#### 12.2 MAXIMUM LIABILITY

IN NO EVENT WILL LICENSORS LIABILITY FOR ANY DAMAGES TO COMPANY OR TO ANY OTHER PERSON OR ENTITY REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE, EVER EXCEED THE FEES RECEIVED BY LICENSOR UNDER THIS AGREEMENT IN CONNECTION WITH THE AFFECTED SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH CLAIM.

### 13. Indemnification

#### 13.1 Licensor

Licensor will indemnify, defend, and hold harmless Company against all claims, actions or proceedings, arising out of any claim that the System provided by Licensor, Licensor Marks, or the permitted use of the same by Company infringes or violates any third party patent, copyright or trade secret right enforceable in the United States. If it is, or, in the reasonable opinion of

Licensor, there is a high probability that it will be, determined by a court of competent jurisdiction that the System or the use thereof infringes any patent, copyright, trade secret or trademark of a third party or if Company is enjoined from using such software or any part of the System, then Licensor, at its sole option and expense, may (i) procure for Company under any applicable patent, copyright, trade secret or trademark the same rights and to the same extent as those granted under this Agreement, (ii) replace such software or any part of the System with other software, which complies with the Documentation; (iii) modify the System, to avoid infringement without material functionality impairment; or (iv) terminate Company's license to the allegedly infringing software or System if (i), (ii) and (iii) are not reasonably practicable, as determined by Licensor. Upon termination under (iv), Licensor shall refund to Company the license fee paid for the allegedly infringing software or System, less a pro-rated amount based on Company's prior use of the allegedly infringing Software. Fulfilling its obligation under this Section 13 will be Licensor's sole obligation to Company and will be Company's sole and exclusive remedy pursuant to this Agreement.

#### 13.2 Company

Company will indemnify, defend, and hold harmless Licensor against all claims, actions or proceedings, arising out of: (a) any claim that the Company Materials or any other content, data, logos, marks or other information provided by Company or its employees or inputted into the System, or the permitted use of the same by Licensor, infringes or violates any third party patent, copyright or trade secret right; (b) use by any Company, or any other person or entity, including without limitation Users not including use by Licensor; and (c) any statements, claims, representations or warranties made by Company or its officers, agents, employees, or representatives relating to the Services, other than as authorized by Licensor in writing or made in Licensor's own writings.

#### 13.3 Obligations

The indemnifying party ("Indemnitor") will pay all damages, settlements, expenses, costs and reasonable attorneys' fees, incurred by the party to be indemnified ("Indemnitee"), arising out of the matters set forth in this Section 13, provided that such payment will be contingent on: (i) prompt notice by the Indemnitee to the Indemnitor in writing of such claim to enable the Indemnitor to defend or mitigate the same; (ii) cooperation by the Indemnitee with the Indemnitor in the defense and/or settlement thereof, at Indemnitor's expense; and, (iii) the Indemnitee allows the Indemnitor to control the defense and all related settlement negotiations, although the Indemnitor will consult with the Indemnitee.

#### 13.4 Exceptions

Licensor will have no indemnity obligation for claims of infringement resulting or alleged to result from any combination, operation, or use of any software or services provided by Licensor with any programs or equipment not supplied by Licensor or not specified in the Agreement for such purpose if such infringement would have been avoided absent such combination, operation. Licensor will have no indemnity obligation for claims resulting or alleged to result from compliance with, or other implementation of, Company specifications. In addition, Licensor will have no indemnity obligation for claims of infringement resulting or alleged to result from any modification of software provided by Licensor by a party other than Licensor if such infringement would have been avoided in the absence of such modifications.

### 14. Term and Termination

#### 14.1 Generally

This Agreement will commence on the Effective Date, and will remain in effect for twelve (12) months thereafter ("Term"). This agreement will automatically renew for an additional twelve (12) months ("Renewal Term") unless notice of Termination is received by either party thirty (30) days prior to renewal. In the event of a termination of the Agreement for any reason, all Schedules will also automatically terminate.

#### 14.2 Termination

In the event that either party materially defaults in the performance of any of its duties or obligations under this Agreement or a particular Schedule and does not substantially cure such default, or commence a cure, within thirty (30) days after being given written notice specifying the default, the non-defaulting party may, by giving written notice thereof to the defaulting party, terminate this Agreement. Without prejudice to any other remedies, Licensor may terminate this Agreement immediately if Company makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws, laws of debtor's moratorium or similar laws.

#### 14.3 Effect of Termination

Within thirty (30) days (or earlier upon Licensor's reasonable written request) after the effective date of a termination of this Agreement for any reason,

Company will (i) pay Licensor for all Services performed by Licensor pursuant to the Schedules up to the effective date of such termination and all other amounts owed by Company to Licensor under this Agreement including, but not limited to, all license fees owed by Company after the effective date of termination; and (ii) return to Licensor all Licensor property, including, but not limited to, the Documentation, and all copies thereof, and the Proprietary Information of Licensor. Upon the return of such materials, Company will provide Licensor with a signed written statement certifying that it has returned all Licensor property to Licensor. Upon termination of this Agreement for any reason, all rights and licenses granted by Licensor hereunder to Company will immediately cease.

#### 14.4 Survival

Termination of this Agreement will not affect the provisions regarding Licensor's or Company's treatment of Proprietary Information, provisions relating to the payments of amounts due, indemnification obligations, or provisions limiting or disclaiming Licensor's liability, which provisions will survive such termination.

### 15. General

#### 15.1 Force Majeure

Neither Licensor nor Company will be liable for failure to perform any of their respective obligations under this Agreement, other than the payment of fees, if such failure is caused by an event outside its reasonable control, including but not limited to, an act of nature, war, or natural disaster.

#### 15.2 Subcontractors

Licensor may, as it deems appropriate, use subcontractors for all or any portion of the Maintenance Services. Licensor may at any time remove and replace any such subcontractors.

#### 15.3 Miscellaneous

This Agreement, including the Schedules and any addenda hereto signed by the parties, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, representations and proposals, written or oral. This Agreement does not operate as an acceptance of any conflicting or additional terms and conditions and will prevail over any conflicting or additional provision of any purchase order or any other instrument of Company, it being understood that any purchase order issued by Company will be for Company's convenience only. This Agreement will not be construed to create any employment relationship, partnership, joint venture or agency relationship or to authorize any party to enter into any commitment or agreement binding on the other party. This Agreement will be binding upon and inure to the benefit of the parties, their legal representatives, permitted transferees, successors, and assigns as permitted by this Agreement. Except as otherwise set forth in this Agreement, this Agreement and all rights and obligations may not be assigned (by operation of law or otherwise) in whole or in part by Company, and any such attempted assignment will be void and of no effect. No delay or failure in exercising any right hereunder and no partial or single exercise thereof will be deemed to constitute a waiver of such right or any other rights hereunder. If any provision hereof is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will be valid and enforceable to the fullest extent permitted by applicable law. All notices required to be given hereunder will be given in writing and will be deemed delivered when delivered either by hand, or by facsimile (with confirmation copy available upon request) or upon two (2) days after mailed by certified mail with proper postage affixed thereto, or by a nationally recognized overnight delivery service addressed to the signatory at the address set forth on the signature page, or such other person and address as may be designated from time to time in writing. All such communications will be deemed received by the other party upon actual delivery. This Agreement will be exclusively construed, governed and enforced in all respects in accordance with the internal laws (excluding all conflict of law rules) of the State of Georgia and any applicable federal laws of the United States of America, as from time to time amended and in effect. Each party agrees that any claim or cause of action whether in law or equity, arising under or relating to this Agreement may be brought in a court of appropriate jurisdiction in the State of Georgia and each party hereby submits to such jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply in any respect to this Agreement or the parties hereto. No modifications, additions, or amendments to this Agreement will be effective unless made in writing and signed by duly authorized representatives of the parties. This Agreement may be executed in any number of counterparts, each of which will be deemed an original but all of which together will be deemed for all purposes to constitute one and the same instrument. Signatures transmitted and received via

facsimile or other electronic means will be treated as original signatures for all purposes of this Agreement.

#### Glossary

**"AccessDate"** means, with respect to the Network Services, the date that Licensor first grants Company access to the System as indicated on Schedule E.

**"Account IDs"** mean the login passwords and identification names issued for access and utilized by Company and their Users to access and utilize the Network Services as provided herein.

**"Company Materials"** means the software, data, algorithms content, data information and/or any other materials provided by Company, reasonably required for Licensor to provide the Services hereunder or under a Schedule, and includes those items required to be provided by Company in accordance with Section 6 herein.

**"Company Website"** means collectively, the points of presence maintained by or on behalf of Company on the Internet.

**"Confidential Information"** means a Disclosing Party's information (in tangible or intangible form) that is disclosed under this Agreement that is valuable to the disclosing party and not generally known by the public, but which does not rise to the level of a trade secret under applicable law.

**"Licensor Server"** means the hardware platform or network system owned or operated by, or on behalf of, Licensor where the System resides and is accessed by Company and Users via an Internet connection to the server using an approved Web browser.

**"Derivative Works"** means any suggestions, contributions, enhancements, improvements, additions, modifications, or derivative works to the referenced software or other materials.

**"Disclosing Party"** means the party disclosing or otherwise making available Confidential Information or Trade Secrets under this Agreement.

**"Documentation"** means the user documentation and any other operating, training, and reference manuals relating to the use of the System, as supplied by Licensor to Company, as well as any Derivative Works thereof.

**"Intellectual Property Rights"** means any and all rights existing from time to time in any jurisdiction under patent law, copyright law, moral rights law, trade-secret law, semiconductor chip protection law, trademark law, unfair competition law, or other similar rights.

**"Link"** means a URL hidden behind a formatting option that may take the form of a colored item of text (such as a URL description), logo or image, and which allows a user to automatically move to or between WWW pages, WWW sites or within a WWW document when a user clicks his/her mouse on that formatting option.

**"Maintenance Services"** means Customization Services, Account Services, Maintenance Services and Additional Services.

**"Marks"** means service marks, trademarks, trade names, logos, and any modifications to the foregoing that may be created during the Term.

**"Materials"** means the data, materials, pictures, documentation, audio, video, animations, artistic works, writings, and other works of authorship.

**"Services Website"** means the uniform resource locators which may be used to access the System via the Internet.

**"System Pages"** means the web site page(s) located on the Licensor Server as part of the Network Services.

**"Proprietary Information"** means individually and collectively Trade Secrets and Confidential Information.

**"Receiving Party"** means the party receiving or otherwise having access to Proprietary Information under this Agreement.

**"Return Links"** means a navigational feature included on a Web or Intranet page accessed through a Link from another Web or Intranet page that allows a Visitor to return to the Web page from which the Visitor originated.

**"Trade Secrets"** mean information (in tangible or intangible form) which is a trade secret under applicable law.

**"Users"** mean the individuals authorized by Company to access and use the System, including Company employees, representatives and agents.

## SCHEDULES

### SCHEDULE A

This Schedule A — System License ("Schedule A") is between Licensor and the Company identified on the cover page of the Agreement identified above.

1. **DEFINITIONS.** As used in this Schedule A, and in addition to any other terms defined herein, the capitalized terms used herein will have the meanings set forth in the Glossary at the end of the Terms and Conditions.

## 2 GRANT OF LICENSE

2.1 Grant. Subject to the Terms and Conditions and this Schedule, including, but not limited to, payment by Company of the applicable fees set forth in the Letter Agreement, during the Term and any renewal terms, Licensor grants to Company a limited, non-exclusive, nontransferable license to:

- (i) remotely access and use the System via a Web browser over an Internet connection to the Licensor Server solely for Company's and its customers and their Users' internal purposes; and
- (ii) make a reasonable number of copies of the Documentation provided in connection with the System for use internally by Company in connection with the Company's exercise of the foregoing rights.

2.2 Weather Data. All weather data may only be used in the United States of America and may have conditions placed on its international commercial use. Weather data provided in connection with the Services can be used within the U.S. or for non-commercial international activities without restriction. The non-U.S. weather data cannot be redistributed for commercial purposes.

2.3 Access. As soon as practicable after Licensor's receipt of the fully executed Agreement, Licensor shall provide the applicable System Services to Company according to the time-table set forth on Schedule E.

2.4 Account IDs. Licensor or Company shall assign each User an Account ID. Each Account ID may be used only by a single individual. No Account ID may be used by a single individual on more than one workstation at any one time. Company acknowledges that the use of a single Account ID by more than one User shall be grounds for immediate termination by Licensor and forfeiture of any unearned fees or deposits.

## 3. COMPANY OBLIGATIONS

In addition to other obligations under this Agreement Company (i) may not impose any liabilities upon Licensor, (ii) may not grant any warranty to the User on behalf of Licensor, and (iii) must be consistent with Licensor's Intellectual Property Rights in the System and Services.

## 4. UPTIME COMMITMENT

4.1 Availability. The Network Services will be provided to Company and its Users twenty-four hours a day, seven days a week less the period during which the Network Services are not available due to one or more of the following events (collectively, the "Excusable Downtime"):

4.1.1 Scheduled network, hardware or service maintenance;

4.1.2 The acts or omissions of Company or Company's employees, agents, contractors, vendors, Users or anyone gaining access to the Network Services by means of Company's Account or User Accounts.

4.1.3 A failure of the Internet and/or the public switched telephone network;

4.1.4 The occurrence of any event that is beyond Licensor's reasonable Control, or

4.1.5 At Company's direction, Licensor restricting Company and Users' access to the Network Services.

4.2 Commitment. Subject to Company satisfying its obligation herein, Licensor guarantees that the Network Services will be available to Company and Users at least 98.5% of the time during each calendar month, excluding Excusable Downtime ("Uptime Commitment"). If Licensor fails to satisfy the Uptime Commitment during a month then Licensor will credit to the Company a pro-rated portion of the System License Fee (as defined below) in the first month of the next succeeding calendar quarter following the failure. For purpose of this Section 3.2 "pro-rated portion of the System License Fee" means the product obtained by multiplying 1/12th of the applicable System License Fee by a fraction, the numerator of which will be the number of hours that the Network Services did not satisfy the Uptime Commitment, and the denominator of which will be the total number of hours during the month that such failure occurred less excusable Downtime. The foregoing refund will be Company sole and exclusive remedy for Licensor's failure to comply with the Uptime Commitment.

5. **License Fees.** In consideration of the license granted herein with respect to the System Services, Company agrees to pay Licensor the fees set forth in the Letter Agreement upon execution of the Agreement and thereafter for Company's use of B1.

### SCHEDULE B

This Schedule B — Maintenance Services ("Schedule B") is between Licensor and the Company identified on the cover page of this Agreement identified above.

1. **Definitions.** As used in this Schedule B, and in addition to any other terms defined herein, the capitalized terms used herein will have the meanings set forth in the Glossary at the end of the Agreement Terms and Conditions.

## 2. **Maintenance Services**

2.1 Licensor's General Responsibilities During the Term of this Agreement and with respect to the System, Licensor will provide the following Maintenance Services:

2.1.1 Respond to any defect report it receives in accordance with the schedule set forth in Section 2.2 below;

2.1.2 Maintain a telephone number and technician to receive calls on a seven (7) days a week, twenty-four (24) hours a day basis, nationally recognized holidays and specific Licensor holidays, excepted, which include New Year's Day, Martin Luther King, Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and day after Thanksgiving, Christmas Eve and Christmas Day, concerning emergency problems and questions;

2.1.3 Clarify functions and features of the System during Licensor's normal business hours;

2.1.4 Provide technical support and guidance in the operation of the System to Company's Systems administrator during Licensor's normal business hours;

2.1.5 Provide System error analysis and correction as set forth in the schedule in Section 1.2 below;

2.1.6 Provide prompt notification and assistance, at Licensor's reasonable discretion, in the event Licensor determines a problem that is covered by this Section 2 exists; and

2.1.7 Provide a designated, knowledgeable support contact for providing technical support, who may be changed by written notice.

2.2 Response Times. Licensor will use commercially reasonable efforts to provide Maintenance Services in accordance with the following response times:

Error Level	Error Classification	Initial Response Time	Resolution Response Time
1	Critical	6 hours	48 hours
2	Severe	14 hours	3 business days
3	Medium	26 hours	10 business days
4	Low	26 hours	Next Release

Licensor's then current standard hourly rates, for which Company agrees to pay Licensor promptly upon receiving an invoice.

2.4 Company's General Responsibilities. Company will be responsible for:

2.4.1 Reporting errors promptly.

2.4.2 Promptly paying all fees and other amounts payable hereunder in accordance with the Agreement.

2.4.3 Providing sufficient information for Licensor to duplicate the circumstances of a reported System defect or duplicate the error, as described in the Documentation, so Licensor can duplicate the error, assess the situation, and/or undertake any needed or appropriate corrective action hereunder

2.4.4 Otherwise following instructions or suggestions from Licensor regarding use, maintenance, upgrades, repairs, workarounds, or other related matters.

2.4.5 Designating two (2) members of its technical staff to serve as Company's System Administrator to contact Licensor with support issues.

2.4.6 Company understands and agrees that Licensor's successful response and provision of Training Services to Company is subject to Company's assistance and compliance regarding (i) at Licensor's reasonable request, Company will provide Licensor with reasonable access to Company's personnel and equipment during normal business hours to discuss and assess any problems and/or requests for assistance; and (ii) Company will document and promptly report to Licensor all errors or malfunctions of the System. It is Company's responsibility to carry out procedures necessary at Company's facilities for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from Licensor.

## 3. **Performance**

3.1 Project Control. Licensor has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed the Maintenance Services to be performed by Licensor hereunder unless otherwise provided herein.

3.2 Subcontractors. Licensor may, as it deems appropriate, use subcontractors for all or any portion of the Maintenance Services. Licensor may at any time remove and replace any such subcontractors.

3. **Ownership and Licenses.** Company acknowledges that Licensor or its third party suppliers own all rights, title and interest in the Deliverables provided and any and all enhancements, suggestions, contributions, modifications or additions that are contributed or added thereto by Licensor. The Company or others, excluding any third party Proprietary Information provided by Company and any Company Proprietary Information (collectively, the "Deliverables Provided"), including but not limited to all Intellectual Property Rights therein. Company also acknowledges that the Deliverables provided contain Proprietary Information belonging to Licensor and its third party suppliers, and that nothing herein gives Company any right, title or interest in such Deliverables except as otherwise expressly set forth in this Schedule B.

4. **Maintenance and Service Fees.** Company will pay to Licensor the fees for the applicable Maintenance Services as set forth in the Letter Agreement

5. **Company Representations and Warranties.** During the term of this Agreement, Company may provide or make available to Licensor certain Company Materials in connection with Licensor performing Customization or Training Services. Company represents and warrants that Company is authorized to provide Licensor such Company Materials and that Licensor is authorized to use such Company Materials solely for the purpose of providing the Services. In addition to any other indemnification obligations it may have under the Agreement, Company will indemnify, defend and hold harmless Licensor from and against any and all claims (including, but not limited to, claims of infringement of Intellectual Property Rights), liabilities, losses, damages, causes of action or injuries, together with costs and expenses, including reasonable attorneys' fees, arising out of or resulting from Company's failure to comply with the foregoing representations and warranties

## SCHEDULE C

This Schedule C—System Description & Network Services Description ("Schedule C") is between Licensor and the Company identified on the cover page of the Agreement identified above.

I. **System.** The System consists of

1.1 A local weather data feed to enable the provision of weather normalized usage information through the System

1.2 An interface to the billing cycle data feed Company's billing system as it exists on the Effective Date. Any modifications or technical development required to maintain the Interface with future versions or upgrades to such Company billing system will be provided by Licensor on a time and materials basis.

1.3 The Billing Insights Call Center Support System to utilize the billing cycle data to provide sophisticated analysis and reporting

1.4 A user interface for Company's call center representative high bill call resolution support function, which includes Licensor's standard CSR call scripting.

**2. Network Services.** The Network Services consists of hosting facilities and servers, enhanced by power conditioners, uninterruptible power systems and emergency standby power generators, consistent with the delivery of the service using full bandwidth T-1 access over fiber-optic lines to high-speed multiprocessor servers, including security for the system and its links consistent with their placement behind a firewall system. In addition, separate embedded security systems are provided through the use of Windows 2003 operating system security functions and Microsoft SQL Server database security systems.

## SCHEDULE D

This Schedule D— Technical Requirements ("Schedule D") is between Licensor and the Company identified on the cover page of the Agreement identified above.

**Requirements for Access to Network Services** include, but may not be limited to:

1. **Access to the internet via an internet service provider (ISP)**
2. **Internet Browser:**
  - 2.1 Internet Explorer 4.0 or higher with temporary session cookies allowed
  - 2.2 Netscape Navigator 4.0 or higher with temporary session cookies allowed
  - 2.3 Browser compatible with (a) or (b) with temporary session cookies allowed

## Schedule E

### Terms of Use

BY ACCESSING THE WEB SITE LOCATED AT **WWW.LODIELECTRIC.APOGEE.NET** USING THIS SITE OR ANY RELATED WEB PAGES INCLUDING WITHOUT LIMITATION ANY CONTENT: TOOLS OR APPLICATIONS ACCESSIBLE ON SUCH WEB PAGES (COLLECTIVELY REFERRED TO AS "SITE") IN ANY MANNER, YOU ("YOU", "YOUR" OR "USER") AGREE THAT YOU HAVE READ AND AGREE TO THESE TERMS OF USE THAT ARE POSTED ON THE SITE. THE SITE IS PROVIDED BY CITY OF LODI AND/OR ITS SUPPLIERS AND LICENSORS (COLLECTIVELY REFERRED TO AS "WE", "US" OR "COMPANY").

### USE OF SITE AND THE TOOLS

This Site provides access to certain content, calculators and other applications related to energy and energy use and related matters ("Content"). The tools use calculations based on various factors, including information that You provide. The accuracy of any output from such tools will reflect the information You submit. Since information changes from time to time, we cannot guarantee that the Content is up-to-date or accurate. In an effort to continue to provide you with as complete and accurate information as possible, information may be changed or updated from time to time without notice. The applications and tools made available on the Site are proprietary and may not be reverse engineered, decompiled, disassembled, copied, distributed or modified by You. You agree not to modify, publish, transmit, transfer or sell, reproduce, create derivative works from, distribute, perform, display, or in any way exploit, any of the Content, in whole or in part, except as expressly permitted in this Agreement. We may terminate your access to the Site if you fail to comply with any of the terms or conditions of these Terms of Use.

Your responsibilities

If You are provided with login information to access the Site, You are responsible to maintain the privacy and security of your login information,

including user names and passwords, and not allow others to use the login information. You will notify us of any breach in secrecy of your login information. You agree to immediately notify Company by e-mail to [insert email address] of any potential breaches of secrecy of the login information and of the departure of any employee with access to the login information. You agree not to link, "frame" or "mirror" any Content or information contained on or accessible from the Site without the prior written approval of the Company or its licensors, as may be appropriate.

### USE OF THE SITE

You agree not to use the Site for any unlawful purpose or in anyway that might harm, damage, or disparage any other party. Without limiting the foregoing sentence and by way of example, You agree that You will not: Threaten, harass, abuse, slander, defame or otherwise violate the legal rights (such as rights of privacy and publicity) of others; Publish, distribute or disseminate any inappropriate, profane, vulgar, defamatory, infringing, obscene, tortious, indecent, unlawful, immoral or otherwise objectionable material or information; Create a false identity or impersonate another for the purpose of misleading others as to the identity of the sender or the origin of a message, including, but not limited to, providing misleading information to any feedback system employed through the Site; Transmit or upload any material that contains viruses, Trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious software programs; Interfere with or disrupt the Site, networks or servers connected to the Site or violate the regulations, policies or procedures of such networks or servers; Attempt to gain unauthorized access to the Site, logins and passwords of others, or computer systems and networks connected to the Site; Permit anyone other than Your authorized users to gain access to or use the Site, or logins and passwords of You; Upload or otherwise transmit any information or content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party; Upload, post or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation (commercial or otherwise); or Use the Site in any manner whatsoever that could lead to a violation of any federal, state or local laws, rules or regulations.

You agree to:

Comply with all notices, instructions and rules posted on the Site; and Implement all Internet access and all security procedures required to use the Site at the sole expense of You.

### THIRD PARTY CONTENT AND LINKS

From time to time, the Site may contain references or links to third-party materials (including without limitation web sites) not controlled by the Company or its suppliers or licensors. The Company provides such information and links as a convenience to you and should not be considered endorsements of such sites or any content, products or information offered on such sites. You acknowledge and agree that the Company is not responsible for any aspect of the information or content contained in any third party materials or on any third party sites accessible or linked to the Site.

### INDEMNITY

You agree to indemnify and hold harmless the Company and its licensors and suppliers, and their respective directors, officers, employees, agents and contractors, from all damages, injuries, liabilities, costs, fees and expenses (including, but not limited to, legal and accounting fees) arising from or in any way related to your violation of these Terms of Use or misuse of the Site by you or any of your employees, contractors or agents.

### LIMITATIONS

IN NO EVENT WILL THE COMPANY OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO ANY PARTY FOR ANY DIRECT, INDIRECT, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES FOR ANY USE OF THIS SITE, OR ANY OTHER LINKED WEB SITE, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, BUSINESS INTERRUPTION, OR OTHERWISE: EVEN IF THE COMPANY OR ITS LICENSORS OR SUPPLIERS IS EXPRESSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE COMPANY OR ITS LICENSORS OR SUPPLIERS BE LIABLE

FOR ANY DIRECT DAMAGES INCURRED BY YOU IN EXCESS OF FIFTY DOLLARS.

#### DISCLAIMERS

THE COMPANY AND ITS LICENSORS AND SUPPLIERS HEREBY DISCLAIM ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY; FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT

#### MISCELLANEOUS

The Company may amend, modify or otherwise change these Terms of Use by posting such modifications on the Site. In the event any of the provisions of the Terms of Use are held unenforceable or invalid by a court of competent jurisdiction, such provisions shall be deemed severed from the applicable agreement, and the remaining provisions thereof shall remain in full force and effect. Failure of any party to enforce, in any one or more instances, any of the provisions herein shall not be construed as a waiver of the future performance of any such terms or conditions. No consent to a breach of any express or implied term of the Terms of Use or any other notice, directive, or rule otherwise posted on the Site shall constitute a consent to any prior or subsequent breach. These Terms of Use will be governed by the laws of the State of Georgia, United States of America

A handwritten signature or mark, possibly a stylized 'G' or a similar character, located in the bottom right corner of the page.



**APPENDIX C**  
**Certificate of Insurance**

Customer Initials \_\_\_\_\_

0

A handwritten signature, possibly reading "J. Smith", is written vertically in the bottom right corner of the page.

August 20



# CERTIFICATE OF LIABILITY INSURANCE

OP ID SS

DATE(MM/DD/YYYY)

08/06/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  Siegel Insurance, Inc. 2987 Clairmont Road Suite 425 Atlanta GA 30329 Phone: 404-633-6332 Fax: 404-633-9388	CONTACT NAME (A/C, No. Ext)  (A/C, No)   INSURER E: INSURER F:
INSURED  Apogee Interactive Inc and Demand Exchange, LLC 100 Crescent Centre Pkwy S#450 Tucker GA 30084-5313	

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMIT
	GENERAL LIABILITY						\$ 1000000
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			35364828EZG	01/01/10	01/01/11	EACH OCCURRENCE
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1000000
							MED EXP (Any one person) \$ 10000
							PERSONAL & ADV INJURY \$ 1000000
							GENERAL AGGREGATE \$ 2000000
							PRODUCTS-COMP/OP AGG \$ 2000000
							\$
	GENL AGGREGATE LIMIT APPLIES PER:						
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ 1000000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> HIRED AUTOS			35364828EZG	01/01/1	01/01/11	\$
A	<input checked="" type="checkbox"/> NON-OWNED AUTOS			35364828EZG	01/01/1	01/01/11	\$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB			79865156	01/09/10	01/09/11	EACH OCCURRENCE \$ 2000000
	<input type="checkbox"/> DEDUCTIBLE						AGGREGATE \$
	<input type="checkbox"/> RETENTION \$						\$
A	WORKERS COMPENSATION AND EMPLOYERS LIABILITY			0871700861	01/01/10	01/01/11	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/ MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$ 1000000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE POLICY LIMIT \$ 1000000
B	Professional Liab						

DESCRIPTION OF OPERATIONS/ LOCATIONS/ VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
The City of Lodi, its Elected and Appointed Boards, Commission, Officers, Agents, Employees and Volunteers are named as Additional Insured but only insofar as their contract is concerned per attached CG2010.

**CERTIFICATE HOLDER****CANCELLATION**

CITY OF  City of Lodi 221 West Pine Street Lodi CA 95241-1910	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
---	---

RESOLUTION NO. 2010-152

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING  
PUBLIC BENEFIT PROGRAMS, AND FURTHER AUTHORIZING  
THE CITY MANAGER TO EXECUTE NECESSARY  
PROFESSIONAL SERVICES AGREEMENTS

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the following Public Benefit Programs as described on Exhibit A attached hereto:

- 1) Lodi Keep Your Cool Program – \$50,000
- 2) Lodi VendingMiser Installation Program – \$25,000
- 3) Lodi On-Line Energy Audit Program – \$29,800

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute Professional Services Agreements required for each Public Benefit Program as outlined in Exhibit A attached.

Dated: September 1, 2010

=====

I hereby certify that Resolution No. 2010-152 was passed and adopted by the City Council of the City of Lodi in a regular meeting held September 1, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce,  
and Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL  
City Clerk

- **Lodi Keep Your Cool Program:** This targeted, direct-install energy conservation program will soon enter its third calendar year here in Lodi. The program provides rebates for participating, eligible commercial customers, assigned to the either the G1 or G2 electric utility rate. The majority of customers participating will be restaurants, mini-markets, donut shops, small grocery stores, etc. For the 2010-2011 program years, the installed energy efficiency measures will include: high efficiency motors, fan motor controllers, anti-sweat heater controls, and infiltration barriers, such as gaskets, strip curtains and door closers. In light of the fact that 30% to 50% of a restaurant or grocery store's annual energy costs are consumed by refrigeration, this is an excellent, targeted program in helping customers reduce their operating costs. Depending on customer participation, the program will save an estimated 150,000-300,000 kilowatt hours annually, thus reducing operating costs for these customers, Note: for the 2009-2010 program year, Lodi Keep Your Cool assisted 22 commercial customers, generating in excess of 400,000 kilowatt hours of energy savings annually. The program (including all material installation) will again be administered by the Bay Area Gasket Guy, with the professional services agreement for \$50,000.
- **Lodi Vending Miser Installation Program:** This is a new energy conservation program designed for commercial/industrial customers. SBW Consulting, Incorporated of Bellevue, Washington will administer this direct-install program, retrofitting over 110 inefficient cold beverage vending machines throughout the community. As part of the \$25,000 professional services contract, SBW will identify the locations of the vending machines for retrofit. SBW will then physically retrofit the units with technology that serves as an energy management system. This system automatically reduces energy load to the vending machine (shutting off lighting and cycling the unit's motor off), when the machine is not in frequent use by patrons, thus serving as an effective energy control device. It is anticipated that annual energy savings will top 175,000 kilowatt hours for the 110 retrofitted cold beverage vending machines.
- **Lodi On-Line Energy Audit Program:** Lodi Electric Utility offers on-line energy audits for residential customers. The on-line service, known as the HomeEnergySuite, is provided by the firm APOGEE Interactive. The on-line tool provides customers with the ability to determine how their monthly energy dollars are expended. The tool also provides access to lighting and appliance calculators, an educational 'Kids Korner' and an energy conservation reference library. On average, fifty to seventy-five customers per month utilize this free service. The professional services contract with APOGEE Interactive for the 2010-2011 program year is for \$29,800. In addition to maintaining the database/on-line tool, APOGEE Interactive also provides monthly updates on customer "hits" (how many customers are utilizing the service), and continually updates the energy conservation reference library with new and emerging energy technologies. New for the 2010-2011 fiscal year is the addition of a small business on-line energy audit program, which will allow customers to identify energy use patterns via the computer, similar to the aforementioned residential on-line audit program.